

# **EXHIBIT C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

LEAGUE OF UNITED LATIN  
AMERICAN CITIZENS - RICHMOND  
REGION COUNCIL 4614, et al.,

Plaintiffs,

vs.

PUBLIC INTEREST LEGAL  
FOUNDATION, et al.,

Defendants.

Civil Action

No. 1:18cv-00423  
(LO/IDD)

VIDEOTAPED DEPOSITION OF NOEL JOHNSON  
Washington, DC  
April 12, 2019

Reported by: John L. Harmonson, RPR  
Job No. 158968

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April 12, 2019

9:01 a.m.

Videotaped Deposition of NOEL JOHNSON, held  
at the offices of Skadden, Arps, Slate, Meagher &  
Flom LLP, 1440 New York Avenue, N.W., Washington,  
D.C., pursuant to the Federal Rules of Civil  
Procedure, subject to such stipulations as may be  
recited herein or attached hereto, before John L.  
Harmonson, a Registered Professional Reporter and  
Notary Public of the District of Columbia, who  
officiated in administering the oath to the  
witness.

A P P E A R A N C E S

On behalf of the Plaintiffs:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

1440 New York Avenue, NW

Washington, DC 20005

BY: SEAN TEPE, ESQ.

ANDREW HANSON, ESQ.

On behalf of the Defendants:

FOLEY & LARDNER

3000 K Street, NW

Washington, DC 20007

BY: MICHAEL LOCKERBY, ESQ.

ALSO PRESENT:

J. CHRISTIAN ADAMS

NAM NGO, Legal Video Specialist

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P R O C E E D I N G S

9:01 a.m.  
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THE VIDEOGRAPHER: This is the start  
of tape labeled number 1 of the videotaped  
deposition of Noel Johnson, in the matter of  
League of United Latin American Citizens, et  
al. v. Public Interest Legal Foundation, et  
al., in the United States District Court for  
the Eastern District of Virginia, Case  
Number 1:18cv423.

This deposition is being held at 1440  
New York Avenue, Northwest, Washington, D.C.  
20005, on April 12, 2019, at approximately  
9:01 a.m.

My name is Nam Ngo from TSG Reporting,  
and I'm the legal video specialist. The  
court reporter is John Harmonson in  
association with TSG Reporting.

Will counsel please introduce  
yourself.

(Whereupon, counsel placed their  
appearances on the video record.)

//

1 Whereupon,

2 NOEL JOHNSON,

3 after having been first duly sworn or affirmed,  
4 was examined and did testify under oath as  
5 follows:

6 MR. TEPE: And for the record,  
7 Mr. Christian Adams is also here attending  
8 the deposition.

9 EXAMINATION

10 BY MR. TEPE:

11 Q. Mr. Johnson, can you state your full  
12 name for the record.

13 A. Noel Henry Johnson.

14 Q. Have you been deposed before?

15 A. No.

16 Q. Have you testified under oath before?

17 A. Yes.

18 Q. In what capacity?

19 A. It was a car accident involving  
20 someone else.

21 Q. When was this?

22 A. Around 2003.

23 Q. So this was at a trial?

24 A. It was not a trial. It was a brief  
25 hearing. I'm not sure of the nature of the

1 proceeding, but I was asked a question.

2 Q. Have you testified under oath in any  
3 other proceedings?

4 A. Not that I recall, no.

5 Q. You understand you're under oath  
6 today?

7 A. I do.

8 Q. Is there any reason why you cannot  
9 give truthful and accurate testimony today?

10 A. No.

11 Q. Before we get underway, and  
12 particularly since you haven't been deposed  
13 before, and I assume your counsel, Mr. Lockerby,  
14 has gone through some of the ground rules, but  
15 just to make sure we're on the same page I'll go  
16 through some of those.

17 The first thing is please provide  
18 verbal responses, no nodding. Is that okay?

19 A. That's okay.

20 Q. All right. And if you can wait until  
21 I finish the question so we're not talking over  
22 each other. Can you do that?

23 A. I can.

24 Q. Counsel may object to some of my  
25 questions, but you must answer unless you're

1 specifically instructed not to answer. Okay?

2 A. Okay.

3 Q. If you are confused by my question,  
4 I'm more than happy to restate it. Just let me  
5 know. Okay?

6 A. Okay.

7 Q. And I usually go about 60 to 90  
8 minutes before sort of taking a break, but if at  
9 any time you want to take a break, just let me  
10 know. The only thing I ask is that if I have a  
11 question pending, you answer the question and  
12 then we can take a break. Okay?

13 A. Okay.

14 Q. Did you do anything to prepare for  
15 today's deposition?

16 A. Yes.

17 Q. What did you do?

18 A. I met with my attorney.

19 Q. Who is that?

20 A. Mr. Lockerby.

21 Q. Did you meet with anyone else?

22 A. No.

23 Q. So to prepare for today's deposition,  
24 you met with Mr. Lockerby and no one else?

25 A. Correct.

1 Q. When did you meet with Mr. Lockerby?

2 A. Yesterday.

3 Q. And for how long?

4 A. It was all day.

5 Q. Did you look at documents?

6 A. I did.

7 Q. Did any of those documents refresh  
8 your recollection of the matters involved in this  
9 case?

10 A. Yes.

11 Q. What documents were those?

12 A. I don't have a specific recollection  
13 of every document.

14 Q. But there were a number?

15 A. What do you mean by number?

16 Q. More than one?

17 A. More than one, yes.

18 Q. Did you talk to anyone else about your  
19 deposition today other than Mr. Lockerby?

20 A. Yes.

21 Q. Who?

22 A. I told my wife it was happening.

23 Q. Anyone else?

24 A. I probably told others at my office it  
25 was happening.

1 Q. Did you talk to Mr. Adams about your  
2 testimony?

3 A. Yes.

4 Q. And what did you discuss?

5 A. Well, not about my testimony, no.

6 Q. Did you talk to Mr. Adams about the  
7 fact that you were being deposed today?

8 A. Yes.

9 Q. And in that regard, what did you  
10 discuss?

11 A. We had -- we briefly discussed the  
12 testimony -- or the deposition of Clara Belle  
13 Wheeler.

14 Q. And what did you discuss there?

15 A. He mentioned that she was not  
16 represented by counsel. He mentioned -- I'm not  
17 recalling exactly what he mentioned other than  
18 that.

19 Q. Did Mr. Adams mention that he was in  
20 attendance at the Clara Belle Wheeler deposition?

21 A. Yes.

22 Q. Did he tell you about anything that  
23 happened in that deposition?

24 A. Yes.

25 Q. What did he tell you about?

1           A.     I think he mentioned some of the line  
2 of questioning that they gave, that she was  
3 asked.

4           Q.     Did he explain why he was telling you  
5 this?

6           A.     No.

7           Q.     Did you ask for this information?

8           A.     No.

9           Q.     And you don't recall what he told you?

10          A.     I'm not recalling what he told me.  
11 Sorry. He mentioned that they had asked her  
12 questions about who -- who she associates with.

13          Q.     Other than Mr. Adams telling you  
14 certain things about what transpired at the  
15 Wheeler deposition, was there anything else that  
16 Mr. Adams told you in preparation for today's  
17 deposition?

18          A.     Yes.

19          Q.     And what was that?

20          A.     We discussed some of the questions  
21 that were asked by Ms. Riggs of Edgardo Cortes.

22          Q.     Such as?

23          A.     Her line of questioning regarding the  
24 process at DMV for citizenship verification; the  
25 process for creating the VERIS reports that



1 reflect noncitizen cancellations.

2 Q. Anything else?

3 A. Not that I recall.

4 Q. So it's not the case that in  
5 preparation for today's deposition you only spoke  
6 with Mr. Lockerby, correct?

7 MR. LOCKERBY: Object to the form.

8 Misstates the witness's testimony.

9 BY MR. TEPE:

10 Q. You can clarify.

11 A. Please repeat the question.

12 Q. So it's not the case that in  
13 preparation for today's deposition you only spoke  
14 with Mr. Lockerby, correct?

15 A. I guess it depends on how you define  
16 "preparation." If you could define "preparation"  
17 for me, I can answer the question.

18 Q. If I have to define "preparation" then  
19 I think I'm going to have to extend the length of  
20 this deposition today.

21 MR. LOCKERBY: And I'm going to object  
22 to the form of the question.

23 MR. TEPE: Because it wasn't a  
24 question.

25 BY MR. TEPE:

1 Q. Well, when I asked -- also I asked if  
2 you had talked to anyone else about today's  
3 deposition. You didn't actually volunteer that  
4 you had conversations with Mr. Adams. Is that  
5 correct?

6 A. I did eventually.

7 Q. Eventually?

8 A. Right.

9 Q. When I use the word "you" today, I'm  
10 going to be referring to you as a person. If  
11 there is any question as to whether or not I'm  
12 referring to you or PILF, just let me know. I'll  
13 try and say when I'm talking about PILF, I'll  
14 mention PILF.

15 Now, what is PILF?

16 A. It's a legal foundation.

17 Q. Public Interest Legal Foundation?

18 A. Correct.

19 Q. And is that your current employer?

20 A. Yes.

21 Q. What is your title at PILF?

22 A. I don't have an official title. I go  
23 by litigation counsel.

24 Q. How long have you been at PILF?

25 A. Around June of 2012. But at that time

1 it was known as ActRight Legal Foundation.

2 Q. What are your responsibilities as  
3 litigation counsel?

4 A. I do research, education, and  
5 litigation.

6 Q. Can you describe what research you do  
7 in your capacity as litigation counsel?

8 MR. LOCKERBY: I'm just going to  
9 object to the extent that the question seeks  
10 to invade the attorney-client privilege. If  
11 the question is about general types of  
12 research, I would have no instruction not to  
13 answer. However, if the question seeks to  
14 determine specific research that Mr. Johnson  
15 has undertaken for specific clients, I would  
16 instruct him not to answer.

17 THE WITNESS: Generally speaking, I  
18 review election and voter registration data.  
19 I research laws in various states and at the  
20 federal level. Other issues related to  
21 elections and election laws.

22 BY MR. TEPE:

23 Q. I should have asked before, where do  
24 you work in terms of geographic location?

25 A. Indianapolis, Indiana.

1 Q. And PILF is an Indianapolis, Indiana,  
2 organization. Is that right?

3 A. Correct.

4 Q. But Mr. Adams works in Virginia. Is  
5 that right?

6 A. Yes.

7 Q. How do you I guess transact business  
8 with Mr. Adams in Virginia and PILF in Indiana?

9 A. Can you define what you mean by  
10 "transact business"?

11 Q. How do you accomplish your daily  
12 tasks?

13 A. With Mr. Adams?

14 Q. Uh-huh.

15 A. We use e-mail or speak on the  
16 telephone.

17 Q. So then in terms of written product,  
18 e-mail is the main way that you transact business  
19 with Mr. Adams?

20 A. Yes.

21 Q. You had mentioned research, education  
22 and litigation. Generally speaking, what is the  
23 education aspect of your responsibilities?

24 A. I have helped produce reports. I have  
25 written material for the media.

1 Q. What do you mean, you have written  
2 material for the media?

3 A. Op-eds, for example.

4 Q. And what kind of reports have you  
5 written?

6 A. Reports showing -- touching on voter  
7 registration matters.

8 Q. Such as the Alien Invasion reports?

9 A. That would be one example.

10 Q. You said litigation. Can you describe  
11 that aspect of your job?

12 A. I act as an attorney for the  
13 foundation and for foundation clients.

14 Q. Who are foundation clients?

15 MR. LOCKERBY: I'll object to the form  
16 to the extent it seeks the identity of  
17 clients whose identity is not publicly  
18 known.

19 MR. TEPE: Fair enough.

20 THE WITNESS: Can you better explain  
21 what you're asking?

22 BY MR. TEPE:

23 Q. Well, you said you act as an attorney  
24 for foundation clients, and then I asked who are  
25 the foundation clients.

1 A. They're the clients we represent.

2 Q. But who are they?

3 A. Their identity?

4 Q. Yes.

5 MR. LOCKERBY: I'm going to object to  
6 the relevancy of this. To the extent that  
7 the identity of certain clients is a matter  
8 of public record is reflected in public  
9 filings, I'm not instructing the witness not  
10 to answer. However, to the extent that the  
11 identity of clients is not publicly known, I  
12 am instructing the witness not to answer.

13 THE WITNESS: All I know is I can  
14 recall the Virginia Voters Alliance. David  
15 Norcross. The American Civil Rights Union.

16 BY MR. TEPE:

17 Q. Any others coming to mind?

18 A. We have been a client ourselves, the  
19 foundation.

20 Q. How many -- Strike that.

21 Do you appear in court on behalf of  
22 your clients or the foundation?

23 A. Yes.

24 Q. And how many cases do you have as an  
25 active docket?

1 A. That I am counsel of record?

2 Q. Correct.

3 A. Right now I can think of two.

4 Q. Do you oversee the work of others as  
5 litigation counsel?

6 A. What do you mean by "oversee"?

7 Q. Manage.

8 A. I have no subordinates if that's what  
9 you're asking.

10 Q. That's not what I'm asking. I'm  
11 saying do you manage other individuals at PILF as  
12 part of your responsibilities?

13 A. I'm not in a management position of  
14 anyone else that I would say.

15 Q. But does it depend on the project? On  
16 certain projects you're sort of coordinating and  
17 managing those projects?

18 A. I would say that I have supervisory  
19 responsibility on the cases of which I am counsel  
20 of record. Others may do work that I review.

21 Q. And do you have supervisory  
22 responsibility for certain reports that you're  
23 drafting?

24 A. I have, yes.

25 Q. Have you ever made media appearances

1 on behalf of PILF?

2 A. Yes.

3 Q. Can you recall what those media  
4 appearances are -- or were, should I say?

5 A. Yes.

6 Q. What are they?

7 A. I recall a radio appearance I did in  
8 Wisconsin related to a voter ID lawsuit in I  
9 think 2015.

10 I can recall an appearance on the Bret  
11 Baier show in I believe 2017.

12 I don't recall any others.

13 Q. And that appearance on Bret Baier,  
14 PILF depended on you to discuss the findings of  
15 Alien Invasion II. Is that right?

16 A. I discussed some of the findings of  
17 Alien Invasion II in that interview, yes.

18 Q. And am I correct that PILF has trusted  
19 you to provide testimony to government bodies on  
20 its behalf?

21 A. Yes, I've done that.

22 Q. What bodies?

23 A. I have appeared before the Privileges  
24 and Elections Commission in the Virginia general  
25 assembly; I think it was a joint session. And I



1 appeared before a committee in Pennsylvania,  
2 although I cannot recall the name.

3 Q. Have you appeared before other  
4 committees?

5 A. Not that I recall.

6 Q. I think you mentioned you supervised  
7 the preparation of the Alien Invasion reports.  
8 Is that right?

9 A. Yes.

10 Q. You drafted those reports?

11 A. The drafting was a collective effort.

12 Q. You wrote the first draft?

13 A. Yes.

14 Q. And you oversaw sort of finalization  
15 of the product?

16 A. Yes.

17 Q. And PILF relied on you to have  
18 correspondence with Virginia election officials,  
19 correct?

20 A. Correct.

21 Q. If I asked you to describe the Public  
22 Interest Legal Foundation, how would you describe  
23 it?

24 A. Are you asking me to describe it?

25 Q. I said how would you describe it.

1           A.       I would describe it as a 501(c)(3)  
2 corporation that focuses on election integrity  
3 and the preservation of the constitutional  
4 framework under which states and the federal  
5 government share control of elections.

6           Q.       Would you describe it as nonpartisan?

7           A.       Yes.

8           Q.       Why?

9           A.       Because it is.

10          Q.       That's kind of conclusory. So  
11 again --

12                   MR. LOCKERBY: Object to the form.

13           Actually, there was no question to object  
14 to. It was a gratuitous comment.

15 BY MR. TEPE:

16          Q.       All right. So I asked would you  
17 describe PILF as nonpartisan, and you answered  
18 yes.

19          A.       I did.

20          Q.       And what is the basis for you saying  
21 that PILF is nonpartisan?

22          A.       We do not act in a partisan manner.

23          Q.       Can you answer that question without  
24 using the word "partisan"?

25          A.       Our activities have been reviewed by

1 the Internal Revenue Service, and we have been  
2 approved as a 501(c)(3) legal foundation. One of  
3 those requirements is that we do not act in a  
4 partisan manner.

5 Q. And when you say "We do not act in a  
6 partisan manner," what do you mean by that?

7 A. We do not intervene in political  
8 campaigns on the side of one partisan interest  
9 over another.

10 Q. What do you mean, "We do not intervene  
11 in political campaigns"?

12 A. We do not advocate the election or  
13 defeat of an identified candidate.

14 Q. You don't publicly advocate for the  
15 election or defeat of a particular candidate,  
16 correct?

17 MR. LOCKERBY: Object to the form of  
18 the question.

19 THE WITNESS: Correct.

20 BY MR. TEPE:

21 Q. But you privately support the election  
22 or defeat of particular candidates, correct?

23 MR. LOCKERBY: Object to the form of  
24 the question. Also it's undefined as to  
25 whether "you" means Mr. Johnson or PILF.

1 MR. TEPE: Fair enough.

2 BY MR. TEPE:

3 Q. But PILF privately supports the  
4 election or defeat of particular candidates,  
5 correct?

6 A. No, I wouldn't say that.

7 Q. PILF works with political parties,  
8 correct?

9 MR. LOCKERBY: Object to the form.

10 THE WITNESS: Define "works with."

11 BY MR. TEPE:

12 Q. You don't know what "works with"  
13 means?

14 MR. LOCKERBY: I'm going to object to  
15 form. It's vague. It's not clear as to  
16 whether the question is directed to PILF  
17 having clients that are political parties or  
18 something else.

19 BY MR. TEPE:

20 Q. PILF coordinates with political  
21 parties on certain activities, yes?

22 MR. LOCKERBY: Object to the form.

23 THE WITNESS: No, I don't recall us  
24 coordinating with a political party on  
25 certain activities.

1 BY MR. TEPE:

2 Q. You had mentioned before, I think,  
3 that PILF was once known as ActRight Legal  
4 Foundation.

5 A. I did mention that.

6 Q. And do you recall when PILF changed  
7 its name from ActRight Legal Foundation to Public  
8 Interest Legal Foundation?

9 A. I don't recall the exact date.

10 (Exhibit 1 marked for identification  
11 and attached hereto.)

12 MR. TEPE: The court reporter has  
13 marked as Exhibit 1 a document.

14 BY MR. TEPE:

15 Q. Do you recognize this?

16 A. It looks like my LinkedIn profile.

17 Q. And your profile has you working for  
18 ActRight Legal Foundation from 2012 to the  
19 present, right?

20 A. That's what the document says.

21 Q. Is there any distinction between  
22 ActRight Legal Foundation and Public Interest  
23 Legal Foundation in your mind?

24 A. Yes.

25 Q. And what's that distinction?

1           A.       At the time the name was changed we  
2       had some change in focus of our organizational  
3       mission, I'll call it.

4           Q.       And what was that change in focus?

5           A.       With ActRight Legal Foundation we were  
6       a little more -- we were a little broader in our  
7       focus on matters of public interest, and along  
8       with the name change came more of a focus on  
9       election integrity and those types of matters.

10          Q.       Many of the same people who worked for  
11       ActRight Legal Foundation currently work for  
12       Public Interest Legal Foundation, correct?

13          A.       Some of them do.

14          Q.       Yourself is one?

15          A.       I am one.

16          Q.       Who else?

17          A.       Kaylan Phillips. Shawna Powell. I  
18       believe those are the only employees who have --

19          Q.       What about Mr. Vanderhulst?

20          A.       No.

21          Q.       Some of the board members are the  
22       same?

23          A.       Yes.

24          Q.       And in what kind of work did ActRight  
25       Legal Foundation engage in?

1           A.       I would describe it as a number of  
2 matters including free speech, religious freedom.  
3 Those are the only two that I can recall  
4 generally speaking. Other constitutional rights.

5           Q.       Was ActRight Legal Foundation involved  
6 in, generally speaking, conservative causes?

7                   MR. LOCKERBY: Object to the form.

8                   THE WITNESS: You might say that,  
9           yeah.

10          BY MR. TEPE:

11          Q.       According to your profile, before  
12 working for ActRight Legal Foundation you worked  
13 as an attorney for the Bopp Law Firm.

14          A.       Correct.

15          Q.       What kind of law did the Bopp Law Firm  
16 practice in at that time?

17          A.       Campaign finance and First Amendment.

18          Q.       It was also conservative focused --

19                   MR. LOCKERBY: Objection.

20          BY MR. TEPE:

21          Q.       -- in its political leanings?

22          A.       I don't consider the First Amendment  
23 to be a conservative viewpoint, if that's what  
24 you're asking.

25          Q.       It's not what I'm asking.

1           A.       I think some might characterize it  
2     that way, but I don't think defense of the First  
3     Amendment is conservative or liberal, if that's  
4     what you mean.

5           Q.       No, I'm just asking questions.

6           MR. TEPE: Can we go off the record?

7           THE VIDEOGRAPHER: We are going off  
8     the record. The time is 9:29 a.m.

9           (Off the record.)

10          THE VIDEOGRAPHER: We are back on the  
11     record. The time is 9:30 a.m.

12          (Exhibit 2 marked for identification  
13     and attached hereto.)

14     BY MR. TEPE:

15          Q.       The court reporter is handing you a  
16     document marked Exhibit 2.

17                 Do you recognize this document?

18          A.       Is it the whole stack or just the top  
19     page?

20          Q.       The whole stack.

21          A.       Yes, I've seen this before.

22          Q.       This is an e-mail that begins with an  
23     e-mail from Rizwana Ahmad with the Prince William  
24     County election office. Is that right?

25          A.       The bottom e-mail on the first page,



1 that's correct.

2 Q. And he sent this e-mail on August 16,  
3 2016, to PILF. Is that right?

4 A. Correct.

5 Q. And was this sent to PILF's general  
6 e-mail mailbox?

7 A. It looks like it was sent to the  
8 contact e-mail at the foundation.

9 Q. And then you forwarded that on to some  
10 other folks at PILF, correct?

11 A. Correct.

12 Q. Let me direct your attention to one of  
13 the attachments to the e-mail. If you go to the  
14 document with the Bates number 9067.

15 Do you recognize this document?

16 A. I've seen it before.

17 Q. And it's a letter drafted to the  
18 Prince William registrar. Is that correct?

19 A. It does say it's to the general  
20 registrar, Michele White, and that it was  
21 received by the Prince William County registrar  
22 and elections office.

23 Q. So date of this letter is August 8th?

24 A. Yes.

25 Q. It's signed by Shawna Powell. Is that

1 right?

2 A. Yes.

3 Q. And she's the secretary of PILF?

4 A. Yes.

5 Q. And that's like an officer position,  
6 correct?

7 A. I believe so.

8 Q. You were involved in the drafting of  
9 this letter, correct?

10 A. I think I was, yes.

11 Q. So the letter starts by saying: "I am  
12 writing on behalf of the Public Interest Legal  
13 Foundation to request inspection of records  
14 related to your office's voter list maintenance  
15 obligations under the National Voter Registration  
16 Act of 1993."

17 Do you see that?

18 A. I see that.

19 Q. And the National Voter Registration  
20 Act is commonly known as the NVRA?

21 A. Yes.

22 Q. And two paragraphs below that the  
23 letter explains: "The NVRA requires your office  
24 to make available for public inspection all  
25 records concerning the implementation of programs

1 and activities conducted for the purpose of  
2 ensuring the accuracy and currency of official  
3 lists of eligible voters." Correct?

4 A. That's what the -- that's what this  
5 letter says, yes.

6 Q. And then pursuant to this section of  
7 the NVRA, PILF makes a records request of Prince  
8 William County, correct?

9 A. Correct.

10 Q. And the first request is for, quote,  
11 documents regarding all registrants who are  
12 identified as potentially not satisfying the  
13 citizenship requirements for registration.  
14 Correct?

15 A. That's part of the first sentence,  
16 yes.

17 Q. It goes on "from any information  
18 source including the Department of Motor Vehicles  
19 and the State Board of Elections." Correct?

20 A. Correct.

21 Q. This request doesn't ask for who were  
22 determined by Prince William County to be  
23 noncitizens, does it?

24 MR. LOCKERBY: Object to the form.

25 The document speaks for itself.

1 THE WITNESS: I think that's one thing  
2 that is responsive to this request.

3 BY MR. TEPE:

4 Q. That wasn't the question I was asking.  
5 I was asking this request does not seek a list of  
6 registrants who were determined by Prince William  
7 County to be noncitizens, does it?

8 MR. LOCKERBY: Objection; asked and  
9 answered.

10 THE WITNESS: I think it does.

11 BY MR. TEPE:

12 Q. How so?

13 A. A record showing those that they  
14 determined not to be citizens would be responsive  
15 to the request.

16 Q. And so would a list of individuals  
17 who, as is stated here in the record, are  
18 potentially not satisfying the citizenship  
19 requirements. True?

20 A. That would also be responsive, I  
21 think, yes.

22 Q. Where did the idea for this request  
23 come from?

24 A. I don't recall.

25 Q. Well, you drafted this letter,

1 correct, a version of it at least?

2 A. Again, I think I did.

3 Q. Do you recall why you were drafting  
4 this letter?

5 A. To obtain the records we requested.

6 Q. And why were you seeking these  
7 records?

8 A. We were exploring the extent of  
9 noncitizen registration in Virginia.

10 Q. Were you looking for a particular  
11 record?

12 A. At this time, I'm not sure. We were  
13 looking for the records that are described or  
14 that are requested, whatever the registrar may  
15 have.

16 Q. Similar letters were sent to other  
17 jurisdictions in Virginia, correct?

18 A. Correct.

19 Q. If you flip to the previous two pages  
20 with the number on the bottom of 9065. Do you  
21 see that?

22 A. I see it.

23 Q. And this is a letter back from the  
24 Prince William County Office of Elections in  
25 response to your PILF's August 8th letter,

1 correct?

2 A. That's what it says, yes.

3 Q. And in the second paragraph it says:

4 "You have requested the inspection of records  
5 related to voter maintenance, especially those  
6 identified as potentially not satisfying the  
7 citizenship requirements for registration."

8 Correct?

9 A. Correct.

10 Q. And the end of that, that's PILF's  
11 language from the previous August 8th letter,  
12 correct?

13 A. Yeah. It's not verbatim but it's --

14 Q. But you used the same "potentially not  
15 satisfying the citizenship requirements"?

16 A. It does, yes.

17 Q. And then in the next paragraph Prince  
18 William states: "In response to your information  
19 request, I am providing a PDF of Prince William  
20 cancellation - declared noncitizen list dating  
21 back from January 1, 2011, to the present date."  
22 Is that right?

23 A. Correct.

24 Q. Is there anything in this letter that  
25 states that people in the list that they were

1 providing were determined by Prince William  
2 County to not be U.S. citizens?

3 MR. LOCKERBY: Object to the form.

4 The document speaks for itself.

5 THE WITNESS: Yes.

6 BY MR. TEPE:

7 Q. Where is that language?

8 A. The second paragraph says that she is  
9 providing a PDF of Prince William County  
10 cancellation - declared noncitizen.

11 Q. No. I asked -- my question was is  
12 there anything in this letter that states that  
13 people in the list that they were providing,  
14 which is what you just mentioned, were determined  
15 by Prince William County to not be U.S. citizens?

16 MR. LOCKERBY: Object to the form.

17 Asked and answered. The fact that counsel  
18 doesn't like the answer doesn't mean he is  
19 entitled to ask the question over and over  
20 again.

21 BY MR. TEPE:

22 Q. You can answer.

23 A. Yes. It says declared noncitizen.

24 Q. Declared by whom?

25 A. The letter does not say.

1 Q. So you have made some interpretations  
2 as to what this list shows, correct?

3 MR. LOCKERBY: Object to the form.

4 THE WITNESS: The letter -- the  
5 language speaks for itself. They were  
6 declared noncitizen.

7 BY MR. TEPE:

8 Q. Again, the question was declared by  
9 whom? Not Prince William County, correct?

10 MR. LOCKERBY: Object to the form.

11 THE WITNESS: It does not say that  
12 Prince William County did not declare them,  
13 no.

14 BY MR. TEPE:

15 Q. And it doesn't say that Prince William  
16 County did declare them noncitizens, does it?

17 A. Well, it does say declared noncitizen.

18 Q. Right.

19 A. It being a record of Prince William  
20 County, yes, I would interpret that to mean  
21 Prince William County or the registrant  
22 themselves have declared them a noncitizen.  
23 Either way --

24 Q. And do you know how they did this  
25 declaration?



1           A.       I'm not sure of the question you're  
2 asking.

3           Q.       Well, you just said that you're  
4 interpreting from the three words -- or actually  
5 it's two words, "declared noncitizen," that  
6 Prince William County made a determination that  
7 these individuals on the list were noncitizens.  
8 And I'm asking you, to your knowledge, how did  
9 they go about making this determination?

10          A.       Well, what I said was either Prince  
11 William County or the registrant themselves who  
12 appears in the list has made the declaration.

13          Q.       And I'm asking you again, how did they  
14 go about doing that?

15          A.       As I understand it, the way the list  
16 is compiled, it is a list of people who indicated  
17 at the DMV that they are not a citizen, under  
18 oath. The DMV compiles a list of those  
19 individuals, transmits it to the Department of  
20 Elections, who then transmits it to the county  
21 election offices. Their registrations are then  
22 canceled based on either a declaration under oath  
23 by the registrants themselves.

24          Q.       Under this process, isn't it correct  
25 that the registrants who are canceled can provide

1 an affirmation that says actually yes, I am truly  
2 a citizen?

3 A. I believe the law requires the county  
4 election official to send them an affirmation for  
5 them to sign.

6 Q. Right. And if they receive that  
7 affirmation within two weeks, then they're not  
8 canceled from the rolls?

9 MR. LOCKERBY: Object to the form of  
10 the question.

11 THE WITNESS: If who receives it in  
12 two weeks?

13 BY MR. TEPE:

14 Q. The registrar.

15 A. I understand if it is returned by the  
16 registrant with a signature declaring --  
17 affirming that they are in fact a citizen, the  
18 registrar is not supposed to cancel their  
19 registration.

20 Q. And in the process that you just  
21 outlined, there was no investigation by Prince  
22 William County into whether or not these people  
23 are citizens. Is that right?

24 MR. LOCKERBY: Object to the form.

25 THE WITNESS: The investigation would

1 be reviewing the list sent to them by the  
2 Department of Elections of all people who  
3 indicated at the Department of Motor  
4 Vehicles under oath that they are not a  
5 citizen. So yes, they have investigated the  
6 matter.

7 BY MR. TEPE:

8 Q. So they receive a list and then they  
9 send out a mailer, correct?

10 MR. LOCKERBY: Object to the form.  
11 Asked and answered. Misstates the witness's  
12 prior testimony.

13 THE WITNESS: If by "mailer" you mean  
14 the affirmation of citizenship, then that is  
15 sent -- supposed to be sent to everyone on  
16 that list.

17 BY MR. TEPE:

18 Q. And -- now, how do you get onto the  
19 voter registration rolls to begin with?

20 A. Where?

21 Q. In Virginia.

22 A. There are a number of ways, as I  
23 understand it.

24 Q. You have to file -- fill out a voter  
25 registration application, correct?

1           A.       I'm not completely familiar with the  
2 law, but yes, I believe that's one way.

3           Q.       How else do you get onto the voter  
4 rolls in Virginia?

5           A.       I don't know of any other way.

6           Q.       And so when you fill out that voter  
7 registration application, there is a question as  
8 to whether or not you are a U.S. citizen,  
9 correct?

10          A.       There is supposed to be, yes.

11          Q.       And there is -- to your knowledge,  
12 there is one?

13          A.       Yes.

14          Q.       And so those individuals who check  
15 "Yes" are supposed to then, assuming the rest of  
16 the application is fine, go on the voter rolls,  
17 correct?

18          A.       If they are otherwise eligible, yes.

19          Q.       And that affirmation of citizenship at  
20 the beginning is also under oath, correct?

21          A.       Correct.

22          Q.       But then as you understand it and as  
23 you just described, there is at some point some  
24 contrary information about citizenship that is  
25 provided to the DMV that is then transmitted to

1 election officials that triggers this notice of  
2 potential cancellation. Is that right?

3 A. The process you described sounds  
4 right, yes.

5 Q. So let's just briefly look at the PDF  
6 that Prince William County sent a couple of pages  
7 later. Do you see that?

8 A. Starting on 9070?

9 Q. Correct.

10 A. Yes, I'm there.

11 Q. And this is a form that has listed at  
12 the top "Cancellation - Declared Noncitizen"  
13 underneath Prince William County, correct?

14 A. Correct.

15 Q. And there is a list of individuals  
16 with their home addresses. Is that right?

17 A. Correct.

18 Q. Their voter registration ID?

19 A. Correct.

20 Q. A date of cancellation?

21 A. Correct.

22 Q. And a column called "Canceled Type"?

23 A. Correct.

24 Q. And that's where it says declared  
25 noncitizen, right?

1           A.       It says that under "Canceled Type" as  
2 well as two other places.

3           Q.       And there are other cancel types in  
4 the records maintained by Virginia election  
5 officials, correct?

6           A.       Correct.

7           Q.       There's like mentally incapacitated,  
8 correct?

9           A.       That's one type, yes.

10          Q.       Are you aware of some other types of  
11 cancellations?

12          A.       Yes.

13          Q.       What are some of the other ones?

14          A.       Deceased. They are canceled if they  
15 die.

16                   They are canceled if they move out of  
17 the jurisdiction.

18                   I believe they're canceled if they  
19 request cancellation.

20          Q.       So there are a variety of cancel  
21 types?

22          A.       Yes.

23          Q.       And on this list from Prince William  
24 County there are 433 names. Is that right?

25          A.       On page 9098 it says that declared

1 noncitizen total is 433. But I did not count the  
2 number of names.

3 Q. And it's for the period January 1,  
4 2011, through August 16, 2016. Is that right?

5 A. That's what it purports to be.

6 Q. When PILF received this list from  
7 Prince William County, do you recall if people at  
8 PILF were happy?

9 MR. LOCKERBY: Object to the form of  
10 the question.

11 THE WITNESS: I don't recall.

12 BY MR. TEPE:

13 Q. Do you recall anyone saying in  
14 response that "You hit pay dirt"?

15 A. I can't say for sure if I recall that,  
16 no.

17 (Exhibit 3 marked for identification  
18 and attached hereto.)

19 THE WITNESS: Are you all done with  
20 this one?

21 BY MR. TEPE:

22 Q. I think so. You can put it aside.

23 The court reporter has handed you a  
24 document marked as Exhibit 3 with the Bates  
25 number 46537. Do you see that?

1 A. I see that.

2 Q. Do you recognize this document?

3 A. I don't recognize it, but I think I've  
4 seen it before.

5 Q. Okay. But this is an e-mail from  
6 Public Interest Legal Foundation, correct, this  
7 e-mail chain?

8 A. Yes.

9 Q. And it shows that from the previous  
10 e-mail from Prince William County, that was  
11 forwarded by you to a number of folks at PILF,  
12 correct? On August 16th?

13 A. At 4:42?

14 Q. Correct.

15 A. Yes, I see that.

16 Q. And then at the top of the chain  
17 Mr. Adams responds to you, copying some other  
18 folks at PILF on the same day at 6:05 p.m.: "As  
19 you saw, David Norcross said we hit pay dirt."

20 Do you see that?

21 A. I see that.

22 Q. Who is David Norcross?

23 A. He's currently a foundation board  
24 member.

25 Q. Was he on the board at this time?



1 A. I don't believe so.

2 Q. Do you recall Mr. Norcross saying "We  
3 hit pay dirt"?

4 A. I don't recall him saying that.

5 Q. Do you recall a conversation with  
6 Mr. Norcross between the time that Prince William  
7 County sent over these records at 3:13 p.m. and  
8 the time of this e-mail at 6:05 p.m.?

9 A. I don't recall that conversation.

10 Q. What did you understand, when you saw  
11 this e-mail, David Norcross to be saying?

12 MR. LOCKERBY: Object to the form. I  
13 would ask that it be identified on the  
14 record where the e-mail from David Norcross  
15 is in this document.

16 THE WITNESS: I don't recall David  
17 Norcross saying that previously in a  
18 conversation with me.

19 BY MR. TEPE:

20 Q. But Mr. Adams did write here: "As you  
21 saw, David Norcross said we've hit pay dirt."  
22 Correct?

23 A. I see that, yes.

24 Q. Do you have any reason to believe that  
25 Mr. Adams was incorrect?

1 A. No.

2 Q. You don't know what Norcross meant by  
3 saying "We've hit pay dirt"?

4 A. I don't know what he meant, no.

5 Q. Were other people at PILF pleased with  
6 receiving this record from Prince William County?

7 A. I'm not recalling any expressions of  
8 pleasure.

9 Q. Were you happy?

10 A. I was happy that they responded to our  
11 records request, yes.

12 Q. You had mentioned earlier that the  
13 August 8th letter that we saw had been sent to  
14 other jurisdictions, correct?

15 A. I believe so, yeah.

16 Q. And other jurisdictions, at least some  
17 of them, provided responses, correct?

18 A. They did, yes.

19 (Exhibit 4 marked for identification  
20 and attached hereto.)

21 BY MR. TEPE:

22 Q. The court reporter has marked for  
23 identification this document as Exhibit 4 with  
24 the Bates number beginning 8775. Do you see  
25 that?

1 A. I see it.

2 Q. Do you recognize this document?

3 A. I do.

4 Q. What do you recognize it to be?

5 A. It's an e-mail chain including a  
6 conversation with the general registrar in  
7 Bedford County, Virginia, and a subsequent e-mail  
8 between members of the foundation. At least the  
9 top e-mail.

10 Q. So let's begin with the initial  
11 e-mail. It's an e-mail from Barbara Gunter,  
12 correct?

13 A. I see that, yes.

14 Q. Director of elections, general  
15 registrar for Bedford County, Virginia?

16 A. Correct.

17 Q. And she says -- and this is dated  
18 August 18th. She says: "I am responding to a  
19 letter dated August 8, 2016, from Shawna Powell,  
20 secretary of PILF." Right?

21 A. Correct.

22 Q. She then states: "Her letter requests  
23 information pertaining to registrants identified  
24 as potentially not satisfying the citizenship  
25 requirements for registration." Correct?

1 A. I see that. That's correct.

2 Q. And then in her e-mail she lists  
3 basically the descriptions of the documents that  
4 she's sending over, correct?

5 A. Correct.

6 Q. Let's look at one of these documents.  
7 If you go to the Bates number 8777. It's a  
8 notice of intent to cancel.

9 A. I see it.

10 Q. And is this the notification that you  
11 were referring to earlier in your testimony after  
12 receiving some information from the DMV?

13 A. Yes.

14 Q. And so it states here: "We have  
15 received" -- it's addressed to an individual  
16 voter, correct?

17 A. Correct.

18 Q. It says: "We have received  
19 information that you indicated on a recent DMV  
20 application that you were not a citizen of the  
21 United States. If the information provided was  
22 correct, you are not eligible to register to  
23 vote."

24 You see that, right?

25 A. I see that.

1 Q. It continues: "If the information is  
2 incorrect and you are a citizen of the United  
3 States, please complete the affirmation of  
4 citizenship form and return it using the enclosed  
5 envelope."

6 Do you see that?

7 A. I see it.

8 Q. So you would agree that election  
9 officials contemplate mistakes being made on the  
10 DMV application, correct?

11 MR. LOCKERBY: Object to the form.

12 THE WITNESS: I think the record  
13 speaks for itself. I don't know what the  
14 registrar herself was thinking.

15 BY MR. TEPE:

16 Q. Well, you would interpret providing  
17 this option to provide an affirmation of  
18 citizenship that perhaps the information from the  
19 DMV is not accurate, correct?

20 A. Right. It's asking the recipient if  
21 the information they provided at DMV is correct.

22 Q. And it might not be correct at the  
23 DMV?

24 A. It's a possibility that it's not  
25 correct.

1 Q. Because why else would you provide  
2 this option if there wasn't that possibility,  
3 correct?

4 MR. LOCKERBY: Object to the form.

5 THE WITNESS: Well, this is a  
6 requirement of the law. I don't know the  
7 purpose behind it.

8 BY MR. TEPE:

9 Q. It then says: "If you do not respond  
10 within 14 days, you will be removed from the list  
11 of registered voters." Correct?

12 A. It says that, correct.

13 Q. And that's what we had discussed  
14 before. You said that there will be a period of  
15 time that if you don't get the affirmation in,  
16 you'll be canceled, correct?

17 A. Correct.

18 Q. Now, Ms. Gunter also provided PILF  
19 with voter registration cancellation notices sent  
20 to individual voters, correct?

21 A. Could you identify them for me?

22 Q. Yeah. Let's go to -- we'll go to  
23 8838.

24 A. Okay, I see that.

25 Q. So the previous document we looked at

1 was a notice of intent to cancel, right?

2 A. Correct.

3 Q. And the process we just processed, if  
4 you don't get the affirmation in within 14 days,  
5 the registrar can then cancel the voter from the  
6 rolls, correct?

7 A. If the notice of intent -- or the  
8 affirmation is not returned in 14 days, the  
9 registrar can cancel them.

10 Q. And this has a title of "Voter  
11 Registration Cancellation Notice," correct?

12 A. Correct.

13 Q. And this was -- this particular one  
14 was directed to Kevin Christopher Moser?

15 A. Correct.

16 Q. And the voter registration notice  
17 states that this office has canceled Mr. Moser's  
18 voter registration, correct?

19 A. Yes.

20 Q. And it states that this action was  
21 taken because Mr. Moser, quote, failed to timely  
22 respond to a request to affirm United States  
23 citizenship within 14 days as allowed by the Code  
24 of Virginia, correct?

25 A. That's not all it says but that is

1 language in this notice.

2 Q. Well, it provides the code cite,  
3 right?

4 A. Well, you didn't read "on the basis of  
5 official notification from the Virginia  
6 Department of Elections."

7 Q. That "you have failed to timely  
8 respond to a request to affirm United States  
9 citizenship"?

10 A. It says that, yes.

11 Q. Now, do you see the handwritten  
12 notation in the upper right-hand corner?

13 A. Yes.

14 Q. It says "reregistered" I think  
15 September -- the handwriting is a little vague --  
16 September 29 of 2011.

17 A. That's what it looks like, yes.

18 Q. So it's possible for voters whose  
19 registrations were canceled to reregister,  
20 correct?

21 A. Yes.

22 Q. And if you go back to the cover e-mail  
23 from Ms. Gunter, she states -- if you go to, I  
24 guess, number 3.

25 A. I see number 3.



1 Q. She states in the last sentence: "I  
2 have noted on the voter cancellation forms if the  
3 voter responded after the 14-day window and  
4 reregistered either in Bedford County or some  
5 other locality." Correct?

6 A. That's what it says, yes.

7 Q. Do you have any basis to believe that  
8 Mr. Moser didn't reregister?

9 A. I don't have any basis to believe that  
10 he didn't reregister.

11 Q. And when he reregistered, he would  
12 have had to affirm his U.S. citizenship, correct?

13 A. That's a requirement that he do that.  
14 I have no basis to believe that he did or did  
15 not.

16 MR. LOCKERBY: When we get to a  
17 convenient stopping point, could we take a  
18 break? Among other things we owe an answer  
19 on something. We need to confirm that.

20 MR. TEPE: Yeah, we'll take a break in  
21 a short little while.

22 BY MR. TEPE:

23 Q. One of the other records that  
24 Ms. Gunter provided is a copy of that  
25 cancellation report, correct? If you go to

1 document with the Bates 8933.

2 A. I'm looking at that page.

3 Q. And this is the same type of report  
4 that Prince William County provided, correct?

5 A. It is.

6 Q. And it lists 35 people, correct?

7 A. Right. The total at the bottom of the  
8 list says 35.

9 Q. And this number 35 made it into Alien  
10 Invasion I, correct? Do you recall?

11 A. When you say "made it in," what do you  
12 mean?

13 Q. It was referenced in Alien Invasion I,  
14 correct?

15 A. Yes, it was.

16 Q. I'm going to hand you another version  
17 of this exhibit because I would like you to mark  
18 it up. Do you have a pen?

19 A. I can get one.

20 Q. I'm trying to find the right page to  
21 direct you to.

22 Can you take a look at that document  
23 and confirm for me that's a copy -- another copy  
24 of Exhibit 4?

25 I tell you what, why don't you go in

1 the exhibit that's already been marked to that  
2 Bates number which is for Mr. Lee's notice. Do  
3 you see that?

4 A. 8832?

5 Q. 8832, correct.

6 Now, in the new document that I just  
7 handed you, why don't you flip to the  
8 cancellation report that we were just looking at.

9 MR. LOCKERBY: What's the Bates number  
10 on that?

11 MR. TEPE: I believe it's 8933.

12 BY MR. TEPE:

13 Q. I'm going to ask you to check off some  
14 of the names in that cancellation list. Okay?

15 A. Okay.

16 Q. All right. So we're going to flip  
17 through in Exhibit 4 these voter registration  
18 cancellation notices.

19 So the first one here we see under --  
20 on Bates 8832 is for Mr. Lee. Is that right?

21 A. Yes.

22 Q. There is a handwritten notation that  
23 he reregistered, correct?

24 A. Yes.

25 Q. Do you want to check off his name?

1 Just put a little checkmark in front of his name  
2 on the document.

3 A. (Witness complies.)

4 Q. And let's flip through a few pages to  
5 8838. You see Mr. Moser, correct?

6 A. I see his name on this page.

7 Q. And a handwritten notation that he  
8 reregistered, correct?

9 A. I see that.

10 Q. Can you check off his name on the  
11 cancellations.

12 A. (Witness complies.)

13 Q. We're going to go really through this  
14 whole attachment doing the same thing. So if you  
15 would flip through to the next person that you  
16 see as having reregistered. I see Jon Guida.

17 A. I see his name.

18 MR. LOCKERBY: What's the Bates number  
19 on that?

20 MR. TEPE: 8847.

21 BY MR. TEPE:

22 Q. Do you see the handwritten notation  
23 that he reregistered, correct?

24 A. Yes.

25 Q. Do you want to check off his name on

1 the cancellation list?

2 A. (Witness complies.)

3 Q. A couple of pages later, 8850,  
4 Michelle Cabaniss. Do you see the notation that  
5 she reregistered?

6 A. Yes.

7 Q. Do you want to check off her name?

8 A. (Witness complies.)

9 Q. A few pages later, 8856, Michael  
10 Harmon.

11 A. I see his name.

12 Q. And a notation that he reregistered,  
13 correct?

14 A. Yes.

15 Q. Do you want to check off his name on  
16 the cancellation list?

17 A. (Witness complies.)

18 Q. 8859. Patricia Scoville. Do you see  
19 the notation that she --

20 A. I see her name.

21 Q. -- that she reregistered?

22 A. Yes.

23 Q. Do you want to check her name off?

24 A. (Witness complies.)

25 Q. A couple of pages later, 8862, Billy

1 Agee. You see a notation that he reregistered,  
2 correct?

3 A. Yes.

4 Q. Could you please check his name.

5 A. (Witness complies.)

6 Q. A few pages later, 8865. Marie  
7 Toussaint.

8 A. I see her name.

9 Q. And it indicates in a handwritten  
10 notation that she reregistered, correct?

11 A. Yes.

12 Q. Check her name off.

13 A. (Witness complies.)

14 Q. Go to 8871. Justin Dunkley. Do you  
15 see that?

16 A. I see his name.

17 Q. And on the cancellation notice is a  
18 handwritten notation that Mr. Dunkley  
19 reregistered, correct?

20 A. Yes.

21 Q. Do you mind checking his name off.

22 A. (Witness complies.)

23 Q. 8874. Teresa Wright. Do you see  
24 that?

25 A. Yes.

1 Q. The notation is that she reregistered,  
2 correct?

3 A. Correct.

4 Q. Do you want to check her name off?

5 A. (Witness complies.)

6 Q. 8877. Phillip McGuire?

7 A. I see his name.

8 Q. A notation that he reregistered,  
9 correct?

10 A. Yes.

11 Q. Check his name off.

12 A. (Witness complies.)

13 Q. A couple of pages later, 8880.  
14 Mr. Tomlinson. Do you see his name?

15 A. I see his name.

16 Q. And a notation that he reregistered?

17 A. Correct.

18 Q. Do you want to check his name off?

19 A. (Witness complies.)

20 Q. A few pages later, 8883. Michael  
21 Huddleston, II?

22 A. I see his name.

23 Q. You notice that he -- a notation that  
24 he reregistered, correct?

25 A. Correct.

1 Q. You can check his name off.

2 A. (Witness complies.)

3 Q. Go to 8889. Scott Wilson. Do you see  
4 his name?

5 A. I see his name.

6 Q. And a handwritten notation that he  
7 reregistered, correct?

8 A. Correct.

9 Q. Can you check his name off?

10 A. (Witness complies.)

11 Q. A couple of pages later, 8892. Evelyn  
12 Garcia.

13 A. I see her name.

14 Q. A notation that she reregistered?

15 A. Yes.

16 Q. Check her name off, please.

17 A. (Witness complies.)

18 Q. If you go to 8898. Peggy Musselman.

19 A. I see her name.

20 Q. A notation that she reregistered?

21 A. Correct.

22 Q. Can you check her name off, please?

23 A. (Witness complies.)

24 Q. 8901. James Moore.

25 A. I see his name.



1 Q. And on the cancellation notice, a  
2 handwritten notation that he reregistered,  
3 correct?

4 A. Correct.

5 Q. Can you check his name off?

6 A. (Witness complies.)

7 Q. Can you go to 8924. Benjamin Fisher.

8 A. I see his name.

9 Q. And also the handwritten notation that  
10 Mr. Fisher reregistered, correct?

11 A. Correct.

12 Q. Can you check his name off?

13 A. (Witness complies.)

14 Q. Okay. So let's look at the  
15 cancellation list that you used in Alien Invasion  
16 I. You have Mr. Douglas checked off, correct?

17 A. I placed an X next to his name.

18 Q. Moser?

19 A. Correct.

20 Q. Guida?

21 A. Yes.

22 Q. Cabaniss?

23 A. Yes.

24 Q. Harmon?

25 A. Yes.

1 Q. Scoville?

2 A. Yes.

3 Q. Agee?

4 A. Yes.

5 Q. Toussaint?

6 A. Yes.

7 Q. Dunkley?

8 A. Yes.

9 Q. Wright?

10 A. Yes.

11 Q. McGuire?

12 A. Yes.

13 Q. Tomlinson?

14 A. Yes.

15 Q. Huddleson?

16 A. Yes.

17 Q. Wilson?

18 A. Yes.

19 Q. Garcia?

20 A. Yes.

21 Q. Musselman?

22 A. Yes.

23 Q. Moore?

24 A. Yes.

25 Q. Fisher?

1 A. Yes.

2 Q. How many names is that?

3 A. Would you like me to count them?

4 Q. Please.

5 A. I believe that's 18 by my count.

6 Q. It's a little bit more than half of  
7 the total of 35 on the list, correct?

8 A. That math adds up.

9 Q. So as of this date of August 18, 2016,  
10 PILF was aware that 35 of these individuals had  
11 reregistered, correct?

12 A. No, not 35.

13 Q. I'm sorry. Let me try that again.

14 So as of this date, August 18, 2016,  
15 PILF was aware that 18 of these individuals had  
16 reregistered, correct?

17 A. There's -- right, there is the  
18 designations on these cancellation notices that  
19 they reregistered.

20 Q. And you have no basis to believe that  
21 those notations are incorrect, correct?

22 A. No.

23 Q. Did you -- Strike that.

24 In Alien Invasion I, was there any  
25 notation that the 35 people referenced in that

1 report, of that 35, 18 had reregistered?

2 A. I don't think so.

3 MR. TEPE: We can go off the record.

4 MR. LOCKERBY: Great. Thank you.

5 THE VIDEOGRAPHER: We are going off  
6 the record. The time is 10:18 a.m.

7 (Recess taken.)

8 THE VIDEOGRAPHER: We are back on the  
9 record. The time is 10:40 a.m.

10 BY MR. TEPE:

11 Q. Mr. Johnson, just a housekeeping item.  
12 The document we just marked up, can you  
13 reassemble that?

14 A. I think this was it.

15 Q. Yeah.

16 A. Now I'm confused. That's in the  
17 previous exhibit.

18 Q. Yeah, that's right. That's got your  
19 notations, right? Yes. Okay.

20 MR. TEPE: All right. So we're going  
21 to mark this -- I believe we're up to  
22 Exhibit 5.

23 (Exhibit 5 marked for identification  
24 and attached hereto.)

25 BY MR. TEPE:

1 Q. Earlier you testified, Mr. Johnson,  
2 that you are kind of responsible for overseeing  
3 the production of the Alien Invasion reports,  
4 correct?

5 A. Correct.

6 Q. Who came up with the idea to write  
7 this report, specifically Alien Invasion I?

8 A. I think the idea for a report was  
9 Mr. Adams'.

10 Q. Who decided to call the report Alien  
11 Invasion?

12 A. I think Mr. Adams suggested the name,  
13 but I'm not 100 percent sure.

14 Q. Was PILF trying to suggest that  
15 Virginia was being invaded?

16 MR. LOCKERBY: Object to the form.

17 THE WITNESS: No.

18 BY MR. TEPE:

19 Q. Do you know the thinking behind  
20 calling the report Alien Invasion?

21 MR. LOCKERBY: Object to the form.

22 THE WITNESS: It was satire.

23 BY MR. TEPE:

24 Q. How do you know?

25 A. That's my recollection of the process

1 by which it was created.

2 Q. Did Mr. Adams tell you that this was a  
3 satirical title?

4 A. Specifically in that language, no.

5 Q. So PILF was trying to use the term  
6 "invasion" but not actually suggest an invasion?

7 MR. LOCKERBY: Object to the form.

8 THE WITNESS: Not a literal invasion  
9 as you would understand that word typically.

10 BY MR. TEPE:

11 Q. You wrote the first draft of Alien  
12 Invasion I, correct?

13 A. Correct.

14 Q. Do you recall how long it took you to  
15 draft the report from the first draft to  
16 publication?

17 A. I don't recall.

18 (Exhibit 6 marked for identification  
19 and attached hereto.)

20 BY MR. TEPE:

21 Q. The court reporter has just marked as  
22 Exhibit 6 a document. Do you recognize it?

23 A. I've seen it before, yes.

24 Q. And what is it?

25 A. The first page is an e-mail that I

1 sent to myself on September 23, 2016.

2 Q. And there is an attachment -- two  
3 attachments, correct?

4 A. There are two attachments.

5 Q. One is a draft, a first draft it looks  
6 like, of the Alien Invasion, correct?

7 A. It looks like a draft, yes.

8 Q. And then the second document that says  
9 "Notes for report."

10 A. Correct.

11 Q. So would you agree, then, that you  
12 started drafting the report roughly around  
13 September 23rd?

14 A. Yes, that sounds right.

15 Q. And did you send drafts of this for  
16 review to Mr. Adams?

17 A. Yes.

18 (Exhibit 7 marked for identification  
19 and attached hereto.)

20 BY MR. TEPE:

21 Q. The court reporter has marked Exhibit  
22 7. I should note the Bates number is 5621.

23 Do you recognize this document?

24 A. I've seen it before.

25 Q. What do you recognize it to be?

1           A.       It's an e-mail from myself to  
2 Mr. Adams attaching a draft of the -- I believe  
3 the Alien Invasion I report.

4           Q.       This is dated September 29, 2016,  
5 correct?

6           A.       Correct.

7           Q.       And this is how you would normally  
8 exchange sort of your business records with  
9 Mr. Adams, would be by e-mail because he was in  
10 Virginia and you were in Indiana, correct?

11                   MR. LOCKERBY: Object to the form.

12                   THE WITNESS: Correct.

13 BY MR. TEPE:

14           Q.       And then you say here: "Christian,  
15 here is a draft of the Virginia report with what  
16 we know so far."

17                   Do you see that?

18           A.       I see that, yes.

19           Q.       And this -- this was presumably  
20 followed by later drafts to Mr. Adams?

21           A.       I don't know if there were later  
22 drafts, but there could have been.

23                   (Exhibit 8 marked for identification  
24 and attached hereto.)

25 BY MR. TEPE:



1 Q. The court reporter has marked as  
2 Exhibit 8 a document with the Bates number 5601.

3 Do you see that?

4 A. I see that.

5 Q. Do you recognize this document?

6 A. I think I've seen it before.

7 Q. It's another draft report that you  
8 sent to Mr. Adams?

9 A. It's an e-mail attaching a draft, it  
10 looks like, yes.

11 Q. And this is dated September 29th,  
12 correct?

13 A. Correct.

14 (Exhibit 9 marked for identification  
15 and attached hereto.)

16 THE WITNESS: Should I keep these  
17 exhibits in front of me?

18 MR. TEPE: Yeah, you can put them to  
19 the side, whichever, but yes.

20 BY MR. TEPE:

21 Q. The court reporter has marked as  
22 Exhibit 9 a document with the Bates number ending  
23 4985. Do you see that?

24 A. I see that.

25 Q. Do you recognize this document?

1           A.       It's an e-mail written by me, at least  
2 one of them is.

3           Q.       So this is a near final draft of the  
4 Alien Invasion report that you circulated  
5 internally. Is that right?

6           A.       It looks that way, yes.

7           Q.       And this is on September 30th, right,  
8 2016?

9           A.       The e-mail is dated September 30th.

10          Q.       The e-mail chain begins with Mr. Adams  
11 sending an e-mail to you and Ms. Phillips and  
12 Mr. Vanderhulst and the subject line says "Have  
13 report up on Sunday."

14          A.       I see that.

15          Q.       What was he talking about there?

16          A.       I believe he --

17          Q.       What did you understand him to be  
18 talking about there?

19          A.       That it needed to be uploaded to our  
20 website by Sunday.

21          Q.       And why did it have to be uploaded to  
22 your website by Sunday?

23          A.       Based on what he wrote in the e-mail,  
24 because he was appearing on Fox.

25          Q.       On Fox News?

1 A. That's how I understood that, yes.

2 Q. So then it took you roughly a week to  
3 pull together the Alien Invasion I report. Is  
4 that right?

5 MR. LOCKERBY: Object to the form.

6 THE WITNESS: Well, Exhibit 6 includes  
7 a draft that has already been written. I  
8 don't know how long before that I started  
9 writing. So it was likely longer than a  
10 week but...

11 BY MR. TEPE:

12 Q. Maybe eight days, nine days?

13 A. I can't say for sure.

14 Q. Now, you recall that when Alien  
15 Invasion I was published, some jurisdictions had  
16 provided you records and other jurisdictions had  
17 not provided you records, correct?

18 A. Correct.

19 Q. Do you know why PILF didn't wait for  
20 the additional records to come in before  
21 publishing?

22 A. I do not recall.

23 Q. Was PILF trying to get Alien Invasion  
24 I published before the 2016 elections in  
25 November?

1 A. I don't recall.

2 (Exhibit 10 marked for identification  
3 and attached hereto.)

4 BY MR. TEPE:

5 Q. The court reporter has just marked and  
6 handed to you Exhibit 10.

7 Do you recognize this document?

8 A. Yes.

9 Q. What does it appear to be?

10 A. It appears to be a copy of Alien  
11 Invasion in Virginia.

12 Q. For the record, we'll state that we  
13 pulled this off of PILF's website as being the  
14 published version of Alien Invasion I.

15 Do you want to flip through it? Does  
16 this look like the full report that PILF  
17 published?

18 A. It looks like it, although I don't  
19 know entirely how many exhibits we had. But it  
20 looks like it's the complete report.

21 Q. So the title is "Alien Invasion in  
22 Virginia: The Discovery and Cover-up of  
23 Noncitizen Registration and Voting." Correct?

24 A. Correct.

25 Q. On the top of the cover is Public

1 Interest Legal Foundation's logo. Is that right?

2 A. That's right.

3 Q. And on the bottom is Virginia Voters  
4 Alliance's logo. Is that correct?

5 A. Correct.

6 Q. And PILF published this in  
7 coordination with Virginia Voters Alliance,  
8 right?

9 A. Correct.

10 Q. And it's dated September 30, 2016?

11 A. Correct.

12 Q. Let me direct you to page 2 of the  
13 report.

14 A. I'm looking at that page.

15 Q. In the second paragraph under "Summary  
16 of Findings" -- do you see that?

17 A. The bolded paragraph?

18 Q. Correct. In bold it says: "In our  
19 small sample of just eight Virginia counties who  
20 responded to our public inspection requests, we  
21 found 1046 aliens who registered to vote  
22 illegally."

23 Do you see that?

24 A. I see that sentence.

25 Q. Now, the 1046, does that come from the

1 cancellation reports that we had been looking at  
2 earlier in your testimony?

3 A. I believe so, yes.

4 Q. We had looked at the cancellation  
5 report that Prince William County had provided,  
6 right?

7 A. We did look at that.

8 Q. And one for Bedford County?

9 A. Correct.

10 Q. And so that 1046 includes the numbers  
11 of people listed in those reports?

12 A. Not only those reports.

13 Q. Right. And so if you go to page 12 of  
14 the report, there is a chart. Do you see it says  
15 noncitizens on the rolls in eight counties?

16 A. Yes.

17 Q. And this totals up to 1046, right?

18 A. It should. At the time the math was  
19 done, it totaled 1046.

20 Q. Would the math change between now and  
21 then?

22 A. No.

23 Q. So Prince William is listed as 443  
24 noncitizens. Is that right?

25 A. Correct.

1 Q. And that's the number we saw in the  
2 report that we looked at in the previous exhibit  
3 or one of the earlier exhibits, correct?

4 A. The total listed at the bottom of the  
5 report.

6 Q. Right. And then Bedford County, 35?

7 A. I see that.

8 Q. And that was the number listed in the  
9 report that we just looked at before the break,  
10 correct?

11 A. The total listed at the bottom,  
12 correct.

13 Q. If you go to page 7, at the bottom of  
14 the page it says in bold: "Prince William County  
15 provided a list of 433 noncitizens who had  
16 registered to vote in the county but were then  
17 removed after they were determined to not be U.S.  
18 citizens."

19 Do you see that?

20 A. I see that.

21 Q. And the phrase "433 noncitizens" is  
22 not just bolded but it's also italicized,  
23 correct?

24 A. Correct.

25 Q. And this sentence has a footnote

1 number 15 hanging off it, correct?

2 A. Correct.

3 Q. It says "see Exhibit 1"?

4 A. Correct.

5 Q. So this is directing the reader to

6 look at Exhibit 1 for the 433 noncitizens in

7 Prince William County, correct?

8 A. It's directing the reader to the VERIS

9 report for Prince William County.

10 Q. And I think that's the first time

11 you've used that term. The cancellation report

12 that we were looking at is also sometimes called

13 the VERIS report?

14 A. Correct.

15 Q. That's because it is a report printed

16 off the VERIS system?

17 A. Yes.

18 Q. And the VERIS system is, I guess, a

19 software database that Virginia uses for its

20 records?

21 A. That's my understanding.

22 Q. So let's go to Exhibit 1 if you don't

23 mind, and I believe that's -- well, it says

24 Exhibit 1, page 1 of 29. Do you see that?

25 A. I think I'm on the same page as you,



1     yes.

2           Q.     This is the cancellation report from  
3     Prince William County, right?

4           A.     Correct.

5           Q.     And this is the report that you got  
6     from Prince William County that we looked at  
7     earlier, correct?

8           A.     Yes.

9           Q.     Now, just go back to page 8 of the  
10    report.    The second paragraph in bold states:  
11    "The United States attorney in Virginia has done  
12    nothing about the felonies committed by 433  
13    aliens registering in Prince William County  
14    alone."

15                   Do you see that?

16          A.     I see that.

17          Q.     And this is again referring to the  
18    people who were listed in Exhibit 1, correct?

19          A.     Correct.

20          Q.     If you go back to Exhibit 1 and flip  
21    to page 26 of 29.

22          A.     I'm looking at page 26.

23          Q.     Do you see about five names down the  
24    name Luciania Freeman?

25          A.     I see that.

1 Q. So Ms. Freeman is one of the 1046  
2 aliens noted on page 2 of Alien Invasion,  
3 correct?

4 A. Correct.

5 Q. And that's the 1046 aliens who  
6 registered to vote illegally according to page 2  
7 of the Alien Invasion report, correct?

8 A. Right. The 1046 refers to the  
9 individuals who are contained in the reports  
10 provided by the election officials.

11 Q. Right. And you stated on page 2 there  
12 were 1046 aliens who registered to vote  
13 illegally, correct?

14 A. Correct.

15 Q. If you go to page 14 of the report,  
16 the report states that Prince William County  
17 provided voter registration applications for the  
18 people listed on the VERIS report, correct?

19 A. Well, it says they provided us  
20 registration forms for those people removed since  
21 2015.

22 Q. Okay, correct. You are correct.

23 So Prince William had the voter  
24 registration applications for 84 of the 433?

25 A. That sounds right based on what's on

1 this page.

2 Q. And footnote 30 says that the  
3 registration applications that were provided to  
4 PILF are available in Exhibit 7. Is that right?

5 A. That's what footnote 30 says.

6 Q. So these are the registration forms  
7 for the what you call, or what PILF states is the  
8 84 noncitizens provided by Prince William County.  
9 Is that right?

10 A. That's what footnote 30 is referring  
11 to, yes.

12 Q. Now let's go to Exhibit 7, page 48 out  
13 of 84. Exhibit 7.

14 A. I'm looking at page 48.

15 Q. And what is reflected on page 48?

16 A. It appears to be an application for  
17 voter registration.

18 Q. For?

19 A. Completed by Luciania Freeman.

20 Q. It's got her home address, correct?

21 A. Correct.

22 Q. Daytime telephone number, correct?

23 A. Correct.

24 Q. And on the form she checked "Yes" to  
25 the question "Are you a citizen of the United

1 States of America?" Correct?

2 A. Correct.

3 Q. So regardless of how her name ended up  
4 on the VERIS report, as of the time PILF  
5 published Alien Invasion I, PILF had evidence of  
6 her attesting to her citizenship, correct?

7 MR. LOCKERBY: Object to the form.

8 THE WITNESS: We possessed this page,  
9 yes.

10 BY MR. TEPE:

11 Q. Did you personally ever try to contact  
12 Ms. Freeman to ask about her election records?

13 A. No.

14 Q. Did you personally try to contact  
15 Ms. Freeman at all?

16 A. No.

17 Q. Are you aware of anyone at PILF trying  
18 to contact Ms. Freeman at all?

19 A. I'm not aware.

20 Q. Did you contact any of the other 432  
21 people identified by -- identified in Exhibit 1?

22 A. I don't believe so, no.

23 Q. Are you aware of anyone at PILF  
24 contacting the 432 individuals other than  
25 Ms. Freeman identified in Exhibit 1?

1 A. I'm not aware of that.

2 Q. Let's go to page 8 of the report.

3 A. I'm looking at page 8.

4 Q. On page 8 there is a reference to  
5 Bedford County.

6 A. I see that.

7 Q. It says: "Bedford County, a  
8 relatively small rural county in Virginia with  
9 only 60,000 individuals of voting age, also  
10 provided a list of 35 noncitizens that have been  
11 removed from their voter rolls."

12 Do you see that?

13 A. I see that.

14 Q. Is there any notation in here that  
15 PILF had information that 18 of those 35 had  
16 reregistered to vote?

17 A. I don't see that in here, no.

18 Q. You can put this document aside.

19 Now, PILF followed up with a second  
20 Alien Invasion report, correct?

21 A. We published a second Alien Invasion  
22 report.

23 Q. So the first one was published around  
24 September 30th of 2016, correct?

25 A. Correct.

1 Q. Do you recall when the second one was  
2 published?

3 A. I think May of 2017.

4 (Exhibit 11 marked for identification  
5 and attached hereto.)

6 BY MR. TEPE:

7 Q. The court reporter has marked as  
8 Exhibit Number 9 --

9 THE REPORTER: 11.

10 BY MR. TEPE:

11 Q. Exhibit 11. Do you recognize this  
12 large document?

13 A. It appears to be a copy of the Alien  
14 Invasion II report and the exhibits cited  
15 therein.

16 Q. And again for the record, this is a  
17 copy of the Alien Invasion II report that we  
18 printed off from PILF's website. Is that what it  
19 appears to be?

20 A. It does.

21 Q. And also just for the record, Alien  
22 Invasion II was published with three different  
23 versions of Exhibit 12, correct?

24 A. I don't recall all three versions, no.

25 Q. Well, do you recall when Alien

1 Invasion II was first published on PILF's website  
2 there was one version of Exhibit 12 that  
3 contained Social Security numbers that had not  
4 yet been redacted?

5 A. Yes. That was brought to our  
6 attention.

7 Q. And once that was brought to PILF's  
8 attention, PILF published a second version of  
9 Exhibit 12 with those Social Security numbers  
10 redacted, correct?

11 A. That sounds right.

12 Q. This exhibit in front of you uses that  
13 version of Exhibit 12.

14 A. I'll have to take your word for it. I  
15 haven't looked at Exhibit 12.

16 Q. And then there was a third version  
17 that removed some voter registration applications  
18 from Exhibit 12. Do you recall that?

19 A. Yes.

20 Q. So just for the record, we're using  
21 the second version in that exhibit.

22 A. Okay.

23 Q. Okay. So the cover of the Alien  
24 Invasion report says: "Alien Invasion II: The  
25 Sequel to the Discovery and Cover-up of

1 Noncitizen Registration and Voting in Virginia."

2 Do you see that?

3 A. I see that.

4 Q. Also on the cover it says "Welcome to  
5 Virginia. Virginia is for Aliens."

6 A. I see that.

7 Q. And that's a takeoff on the old  
8 Virginia slogan "Virginia is for Lovers," right?

9 A. Yes.

10 Q. The inside cover of Alien Invasion II  
11 again has the logo of Public Interest Legal  
12 Foundation, correct?

13 A. Yes.

14 Q. And the logo of the Virginia Voters  
15 Alliance, correct?

16 A. Correct.

17 Q. And it's dated May 2017?

18 A. Correct.

19 Q. And so this sequel was also published  
20 in conjunction with VVA, correct?

21 A. Correct.

22 Q. If you go to page 1 of the report, it  
23 begins with a reference back to your findings in  
24 Alien Invasion I. Is that right?

25 A. That's right.



1 Q. It states in the first paragraph:

2 "Our investigation revealed that in these eight  
3 Virginia localities more than 1000 noncitizens  
4 had recently been removed from the voter rolls."

5 Do you see that?

6 A. Yes, I do.

7 Q. It says: "In this small sample,  
8 nearly 200 verified ballots were cast prior to  
9 official removal. Each one of them is likely a  
10 felony."

11 Do you see that?

12 A. I see that.

13 Q. And then the report states that PILF  
14 had done a more statewide look at the records in  
15 Virginia, correct?

16 A. I think it speaks for itself, but  
17 that's what we did.

18 Q. And on the third paragraph here on  
19 page 1: "As a result" -- it states: "As a  
20 result, the number of registrants removed from  
21 voter rolls for citizenship problems during the  
22 last few election cycles grew to over 5500."

23 Do you see that?

24 A. I see that.

25 Q. "Of these illegal registrants, 1852

1 cast nearly 7500 ballots in elections dating back  
2 to 1988."

3 Do you see that?

4 A. I see that.

5 Q. And so I understand the phrase  
6 "illegal registrants" is referring to the over  
7 5500 individuals, correct?

8 A. That's the logical inference from  
9 their inclusion on the VERIS reports.

10 Q. Well, no, I'm just asking about the  
11 sentence. When you say of these illegal  
12 registrants, 1852 cast a number of ballots,  
13 you're saying --

14 A. These refers to 5500 in the preceding  
15 sentence.

16 Q. So illegal registrants refers to over  
17 5500, right?

18 A. Correct.

19 Q. On page 2, under "Summary of  
20 Findings," the second paragraph, it states: "The  
21 numbers are alarming: 5556 noncitizens have been  
22 removed from the voter rolls for citizenship  
23 problems in 120 of Virginia's 133 voting  
24 jurisdictions since 2011."

25 Do you see that?

1 A. I see that.

2 Q. And beneath this paragraph is a  
3 graphic.

4 A. I see that.

5 Q. It says 5556 noncitizen registrations.

6 A. I see that.

7 Q. And 7474 votes cast by noncitizens.

8 Do you see that?

9 A. I see that too.

10 Q. How did PILF identify the 1852 out of  
11 5556 having voted?

12 A. PILF did not identify them.

13 Q. Then how is it in your report?

14 A. Someone else identified them.

15 Q. Who identified them?

16 A. The Virginia Voters Alliance.

17 Q. So Virginia Voters Alliance performed  
18 this analysis that yielded the 1852 number?

19 A. Yes, with PILF's assistance.

20 Q. I'm sorry, there's a siren in the  
21 background. Can you say it again?

22 A. With the foundation's assistance.

23 Q. PILF's assistance?

24 A. Yes.

25 Q. Did VVA work with anyone else in

1 calculating this number of 1852?

2 A. I believe they did.

3 Q. Did they work with a political action  
4 committee? Is that right?

5 A. I believe one of the entities is a  
6 political action committee.

7 Q. And that's Middle Resolution PAC?

8 A. That sounds right.

9 Q. Are there other entities that VVA  
10 worked with?

11 A. Not that I'm aware.

12 Q. The 5556 number comes from a statewide  
13 VERIS report received by PILF. Is that right?

14 A. It may come from more than one, but it  
15 is a statewide report.

16 Q. I'm not sure I understand your answer.

17 A. We received more than one statewide  
18 VERIS report.

19 Q. Okay. You're saying that you received  
20 multiple statewide VERIS reports?

21 A. Yes.

22 Q. Well, one of them is published in  
23 Exhibit 1 to Alien Invasion II, correct?

24 A. I believe that's correct.

25 Q. When you said "the other report," were

1 you referring to the custom report that the  
2 Virginia Department of Elections sent over?

3 A. No.

4 Q. What are you referring to? Oh, I'm  
5 sorry. You're referring to the fact that there  
6 was one report for a certain time period and then  
7 a second report for a more recent time period.  
8 Is that right?

9 A. Correct.

10 Q. And so both of them together are  
11 what's published in Exhibit 1, correct?

12 A. I believe so. I haven't looked at  
13 Exhibit 1 right now.

14 Q. You can feel free. I think the date  
15 ranges are on the top of the pages. Right?

16 A. Yes, it looks like there are two  
17 reports from separate time periods in Exhibit 1.

18 Q. And so the VERIS report that you just  
19 looked at as Exhibit 1 is the same type of report  
20 that was used in Exhibit 1 in the Alien Invasion  
21 I, correct?

22 MR. LOCKERBY: Object to the form.

23 THE WITNESS: If you mean if it's also  
24 a VERIS-generated report, yes.

25 BY MR. TEPE:

1 Q. There are differences, such as the  
2 time period covered, correct?

3 A. Yes, that would be one difference.

4 Q. And when the report was generated,  
5 that would be another difference?

6 A. Yes.

7 Q. Is there another difference you're  
8 aware of?

9 A. The number of jurisdictions included  
10 in the report is different.

11 Q. Right. So in Alien Invasion I,  
12 Exhibit 1 was just Prince William County that you  
13 had published, correct?

14 A. I believe so, yes.

15 Q. And in Alien Invasion II, you  
16 published all of the jurisdictions that had names  
17 listed in the cancellation report, which was  
18 about 120 out of --

19 A. Yes.

20 Q. -- 133, if I recall correctly.

21 A. Yes.

22 Q. Please go to page 100 of 486.

23 A. In Exhibit 1?

24 Q. Exhibit 1.

25 A. I'm looking at page 100.

1 Q. Do you see the name Eliud Bonilla at  
2 the bottom?

3 A. I see that.

4 Q. Do you see his home address listed?

5 A. I see an address listed. I don't know  
6 if it's his home address.

7 Q. And Mr. Bonilla is one of the 5556  
8 noncitizens noted in the Alien Invasion II  
9 summary of findings, right?

10 A. Yes.

11 Q. Now go to page 258 of 486.

12 A. I'm looking at page 258.

13 Q. Do you see the name Luciania Freeman?

14 A. I do.

15 Q. And an address for her?

16 A. I see an address.

17 Q. So Ms. Freeman is one of the 5556  
18 noncitizens noted in the Alien Invasion II  
19 summary of findings, correct?

20 A. Yes.

21 Q. PILF had the voter registration  
22 application for Mr. Bonilla, correct?

23 A. I don't recall if we did.

24 Q. If you go to page 217 -- it should be  
25 tabbed -- of Exhibit 12.

1 A. Is it one of these other tabs?

2 Q. Yeah, it might be. It would be  
3 Exhibit 12.

4 A. Okay.

5 MR. LOCKERBY: Can we get a Bates  
6 number for identification? The copy I'm  
7 looking at does not have page numbers on it.

8 MR. TEPE: I guess it's PILF 50.

9 THE WITNESS: I see that.

10 BY MR. TEPE:

11 Q. Okay. So this is a voter registration  
12 application for Mr. Bonilla. Is that right?

13 A. It appears to be.

14 Q. It's got an address listed, right?

15 A. Yes.

16 Q. A telephone number?

17 A. Yes.

18 Q. And he checked the box "Yes" to "Are  
19 you a citizen of the United States of America?"  
20 Correct?

21 A. Yes.

22 Q. So at the time that PILF published  
23 Alien Invasion II, PILF had at least one document  
24 indicating Mr. Bonilla was claiming U.S.  
25 citizenship, correct?



1 A. We had this document in our  
2 possession, yes.

3 Q. And PILF had another document, the  
4 VERIS report, indicating his registration had  
5 been canceled, correct?

6 A. The VERIS report indicated his  
7 registration was canceled.

8 Q. Before publishing Alien Invasion II,  
9 did you try to contact Mr. Bonilla to ask about  
10 these different documents?

11 A. No.

12 Q. To your knowledge, did anyone at PILF  
13 try to contact Mr. Bonilla?

14 A. Not to my knowledge.

15 Q. His phone number is right there,  
16 correct?

17 A. It's on this document, yes.

18 Q. You had the voter registration  
19 application for Ms. Freeman as well, correct?

20 A. We do have it, yes.

21 Q. And it's in that set in front of you,  
22 correct, enclosed in Exhibit 12, right?

23 A. I don't think I've seen it yet but...

24 Q. I think it might be the next tab in  
25 your pile. Right there, near the bottom.

1           A.       Yes, the application for registration  
2 for Luciania Freeman is in this exhibit.

3           Q.       With her home address, or an address?

4           A.       It includes an address.

5           Q.       And telephone number?

6           A.       Yes.

7           Q.       And she marked "Yes" to the question  
8 "Are you a citizen of the United States of  
9 America?"

10          A.       Yes.

11          Q.       So you would agree at the time PILF  
12 published Alien Invasion II, it had at least one  
13 document indicating Ms. Freeman was claiming U.S.  
14 citizenship, correct?

15          A.       We had this document in our  
16 possession, correct.

17          Q.       And PILF had another document of the  
18 VERIS report indicating her registration had been  
19 canceled, correct?

20                   MR. LOCKERBY: Object to the form.

21                   THE WITNESS: Her name was included in  
22 the VERIS report, yes.

23                   MR. TEPE: What's the objection,  
24 counsel?

25                   MR. LOCKERBY: The objection is the

1 question is misleading. It assumes that  
2 this document does not say "canceled -  
3 declared noncitizen" on it. By using the  
4 phrase "another document" it misstates the  
5 record and the evidence.

6 BY MR. TEPE:

7 Q. So you would agree at the time PILF  
8 published Alien Invasion II, it had at least one  
9 document indicating Ms. Freeman was claiming U.S.  
10 citizenship, correct?

11 A. This document was in our possession.

12 Q. Her voter registration application,  
13 correct?

14 A. Yes.

15 Q. Now, you also had another document  
16 published in Exhibit 1 to Alien Invasion II that  
17 indicated her voter registration had been  
18 canceled, correct?

19 A. The VERIS report indicated her voter  
20 registration had been canceled.

21 Q. Before publishing Alien Invasion II,  
22 did you try to contact Ms. Freeman to ask about  
23 these two different documents?

24 A. No.

25 Q. To your knowledge, did anyone at PILF

1 try to contact Ms. Freeman?

2 A. No.

3 Q. You had uploaded all these exhibits to  
4 PILF's website, correct?

5 A. I did not, I don't believe. I don't  
6 recall if I did.

7 (Exhibit 12 marked for identification  
8 and attached hereto.)

9 BY MR. TEPE:

10 Q. I believe this is marked as Exhibit  
11 12.

12 A. It is.

13 Q. With a Bates number ending in 996?

14 A. Correct.

15 Q. Does this refresh your recollection as  
16 to whether you uploaded exhibits to PILF's  
17 website for Alien Invasion II?

18 A. It does say: "I have all the exhibits  
19 uploaded to the website and ready to go."

20 Q. Now, uploading all of these exhibits  
21 to PILF's website effectively allowed anyone in  
22 the world with Internet access to see the names  
23 of the people listed in the exhibits to Alien  
24 Invasion II, correct?

25 A. Once the pages were made live, that's

1 correct.

2 Q. See their home addresses, correct?

3 A. I'm sorry, can you repeat the  
4 question?

5 MR. TEPE: Strike that.

6 BY MR. TEPE:

7 Q. Were there discussions at PILF  
8 regarding whether to publish these records on the  
9 Internet?

10 A. By "these records" you mean what?

11 Q. The records that were included as  
12 exhibits to Alien Invasion II.

13 A. We had discussions, yes.

14 Q. What do you recall about those  
15 discussions?

16 A. I recall that with the Alien Invasion  
17 I report we did not publish all the records  
18 referenced in the report.

19 Q. So in Alien Invasion I you had  
20 published the VERIS report for Prince William  
21 County but not the VERIS report for Bedford  
22 County, for example?

23 A. For example, correct.

24 Q. But in Alien Invasion II you published  
25 the VERIS report for 120-some-odd jurisdictions?

1 A. Correct.

2 Q. Was there a discussion that you recall  
3 as to whether or not PILF should publish on the  
4 Internet the VERIS report?

5 A. I do not recall that discussion.

6 Q. Was PILF trying to make it easy for  
7 law enforcement -- Strike that.

8 By publishing these exhibits online,  
9 was PILF trying to make it easy for law  
10 enforcement to prosecute people?

11 A. I don't recall that being discussed as  
12 a reason to publish them online.

13 Q. Do you recall that being discussed as  
14 a reason to have Alien Invasion reports  
15 published?

16 A. When you say "published," do you mean  
17 printed somewhere other than online?

18 Q. No. Just published generally, whether  
19 it's in print, online.

20 A. I recall that being discussed.

21 Q. Do you recall Mr. Adams telling you,  
22 "Remember, this was intended to be a turnkey  
23 prosecution for officials. I can hand them the  
24 report and they can virtually get a grand jury  
25 indictment." Do you recall that?

1 A. Vaguely.

2 Q. In the report Alien Invasion II, PILF  
3 advocated using the exhibits to Alien Invasion II  
4 to prosecute individuals, correct?

5 A. I recall that we advocated for  
6 enforcement of the law.

7 Q. And specifically prosecution of people  
8 in the records that PILF was publishing, correct?

9 A. I don't recall that as you're  
10 characterizing it, no.

11 Q. Let's go to page 16 of Alien Invasion  
12 II.

13 A. Is that in the same exhibit?

14 Q. It's the bigger one.

15 A. But Exhibit 12, is that a copy of the  
16 report? Or do you want me to use Exhibit 11?

17 Q. Exhibit 12.

18 A. This is Exhibit 11.

19 Q. Or Exhibit 11.

20 A. Page 16?

21 Q. Correct.

22 A. I'm looking at page 16.

23 Q. Page 16 shows a number of  
24 recommendations that PILF was making based on its  
25 findings, correct?

1           A.       I think the page speaks for itself.

2           Q.       So it says at the top "Recommendations  
3 and Solutions," correct?

4           A.       Yes.

5           Q.       And then one of the recommendations on  
6 the right-hand side, the last checked box, the  
7 checkmark says: "Law enforcement at both the  
8 federal and state level should exercise their  
9 authority to prosecute cases of voter fraud.  
10 Voter registration and voting history records  
11 such as those contained in this report make  
12 prosecution an easy task."

13                   Do you see that?

14           A.       I see that.

15           Q.       And then if you go to page 3 of the  
16 report, the third paragraph on the left-hand  
17 side, second sentence, it says: "The response of  
18 law enforcement officials to both single  
19 instances of voter fraud and the hundreds of  
20 examples documented in this report should be the  
21 same: swift, sure and unwavering."

22                   Do you see that?

23           A.       I see that.

24           Q.       Do you understand that to be swift  
25 prosecution of the hundreds of examples



1 documented in this report?

2 A. I understand it to mean the response  
3 of law enforcement. That is what it is  
4 modifying.

5 Q. Response of law enforcement should be  
6 swift, correct?

7 A. That's what it means, yes.

8 Q. It should be unwavering, correct?

9 A. Unwavering also modifies response.

10 Q. And what kind of response was PILF  
11 advocating there?

12 A. Further investigation.

13 Q. And potentially prosecution?

14 A. If after the investigation there was  
15 grounds to prosecute, then, yes.

16 Q. Well, why wouldn't there be grounds to  
17 prosecute if you had 5556 noncitizens who had  
18 registered to vote illegally?

19 A. I'm not a law enforcement official.  
20 There may be a number of reasons they do not  
21 prosecute.

22 Q. Well, putting aside maybe a  
23 discretionary decision whether to prosecute  
24 people, you are confident that the 5556 people  
25 listed in Exhibit 1 to Alien Invasion II are

1 noncitizens, right?

2 A. We reported the contents of the  
3 official records provided by the government.

4 Q. Right. And in your report you call  
5 them 5556 noncitizens, correct?

6 MR. LOCKERBY: Object to form.

7 THE WITNESS: I believe the report  
8 uses that language, yes.

9 BY MR. TEPE:

10 Q. So part of PILF's purpose in  
11 publishing Alien Invasion II was to see some  
12 people be prosecuted, correct?

13 MR. LOCKERBY: Object to the form.

14 THE WITNESS: No, I would not agree  
15 with that.

16 BY MR. TEPE:

17 Q. That was not a purpose of publishing  
18 Alien Invasion II, was to see some people be  
19 prosecuted?

20 A. One of the purposes was to investigate  
21 whether there should be prosecution. This was  
22 evidence we intended for them to use in their  
23 investigation.

24 Q. Well, I believe you recalled earlier  
25 Mr. Adams telling you that Alien Invasion was

1 intended to be a turnkey prosecution for  
2 officials. Hand them the report and they could  
3 virtually go get a grand jury indictment,  
4 correct?

5 MR. LOCKERBY: Object to the form.

6 The question misstates the witness's prior  
7 testimony. The transcript reflects what he  
8 said. And on its face the question has been  
9 asked and answered, if it is a question.

10 THE WITNESS: If there is a question,  
11 I ask that it be repeated.

12 BY MR. TEPE:

13 Q. Was publishing Alien Invasion II --  
14 Strike that.

15 Was one purpose of publishing Alien  
16 Invasion II to get at least some people  
17 prosecuted --

18 MR. LOCKERBY: Objection.

19 BY MR. TEPE:

20 Q. -- by law enforcement?

21 MR. LOCKERBY: Objection; asked and  
22 answered.

23 THE WITNESS: If there were grounds  
24 for prosecution?

25 BY MR. TEPE:

1 Q. Yes.

2 A. Yes.

3 Q. Now, PILF also recognized that one of  
4 the goals of prosecution is to change the  
5 behavior of those who are not directly  
6 prosecuted, correct?

7 MR. LOCKERBY: Object to the form.

8 THE WITNESS: Please repeat the  
9 question.

10 BY MR. TEPE:

11 Q. PILF also recognized that one of the  
12 goals in prosecution generally is to change the  
13 behavior of those who are not directly  
14 prosecuted, correct?

15 A. I guess I don't know who you're  
16 referring to when you say "those not directly  
17 prosecuted."

18 Q. Okay. Let's go to page 2 of the  
19 report.

20 A. I'm looking at page 2.

21 Q. Under the header "The Stakes," fourth  
22 paragraph down, the report states: "Even worse,  
23 federal and state law enforcement officials who  
24 are entrusted with prosecuting noncitizens who  
25 register and vote as a means to deter others from

1 doing the same have repeatedly done nothing when  
2 provided with solid evidence of noncitizen  
3 participation in the electoral system."

4 Do you see that?

5 A. I see that.

6 Q. Is it fair to say that PILF believed  
7 that part of the reason why you prosecute is to  
8 deter others from engaging in the same conduct?

9 A. If by "others" you mean those who  
10 would intend to break the law, then enforcement  
11 of the law has a deterrent effect on those  
12 people. That is the theory, at least.

13 Q. Do you believe that investigating  
14 those accused of breaking the law could influence  
15 the behavior of others accused of breaking the  
16 law?

17 MR. LOCKERBY: Object to the form of  
18 the question.

19 THE WITNESS: It depends on who is  
20 doing the investigating and who's doing the  
21 accusing.

22 BY MR. TEPE:

23 Q. But it's possible?

24 A. I would agree it's possible.

25 Q. PILF could have simply handed the data

1 it collected from election officials to  
2 prosecutors confidentially, correct?

3 A. We could have.

4 Q. Instead, PILF decided to publish  
5 people's names for all the world to see, correct?

6 MR. LOCKERBY: Object to the form.

7 THE WITNESS: No, I disagree with "all  
8 the world."

9 BY MR. TEPE:

10 Q. Well, PILF decided to publish people's  
11 names on the Internet, correct?

12 MR. LOCKERBY: Objection.

13 THE WITNESS: We published people's  
14 names on the Internet.

15 BY MR. TEPE:

16 Q. As opposed to just simply handing over  
17 those names to prosecutors confidentially,  
18 correct?

19 A. It was not an either/or.

20 Q. Well, those were two options, publish  
21 it on the Internet or hand it over to  
22 prosecutors, correct? Those are two options?

23 A. Those are two possible options, yes.

24 Q. Are you aware of other options?

25 A. Yes.

1 Q. Such as?

2 A. We could have printed it and  
3 distributed it about town.

4 Q. Okay. Any other options?

5 A. It could have been mailed to a select  
6 number of people. There's probably many more  
7 options of what we could have done with a printed  
8 document.

9 Q. And you could have also not handed the  
10 documents over to prosecutors, correct? That was  
11 an option?

12 A. Not giving it to prosecutors was an  
13 option?

14 Q. Right.

15 A. That was an option.

16 Q. Not publishing it on the Internet was  
17 an option?

18 A. That was an option.

19 Q. So why -- why did PILF decide to  
20 publish these records on the Internet? Do you  
21 know?

22 A. I do not recall discussions as to why  
23 it should be published on the Internet.

24 Q. So PILF published the names and  
25 addresses of thousands of people, and you don't

1 know why they did it?

2 MR. LOCKERBY: Object to the form.

3 THE WITNESS: No, I said I don't  
4 recall discussions as to why it was  
5 published on the Internet.

6 BY MR. TEPE:

7 Q. Okay. So you don't recall  
8 discussions, but you know why PILF did it?

9 A. I know that it was done. I don't  
10 recall discussing the reason why it was done.  
11 Nor do I know the reason it was necessarily done.

12 Q. So you uploaded for publication on the  
13 Internet the names and addresses of over 5000  
14 people and you don't know why?

15 MR. LOCKERBY: Object to the form.

16 Asked and answered.

17 THE WITNESS: Again, I don't -- I  
18 don't recall having a discussion as to this  
19 is why we need to publish this on the site,  
20 no.

21 BY MR. TEPE:

22 Q. Now, we had discussed earlier that  
23 PILF had voter registration applications for many  
24 people, correct?

25 A. You're referring to the applications?



1 Q. Published in Exhibit 12 to Alien  
2 Invasion II, correct.

3 A. We possessed the registration  
4 applications contained in Exhibit 12.

5 Q. There's 764 applications?

6 A. I don't know the exact number.

7 Q. Did you personally review these  
8 applications?

9 A. I did review some of them.

10 Q. What was the purpose for collecting  
11 these voter registration applications?

12 A. One reason was to observe what answer  
13 the registrant gave to the citizenship question.

14 Q. Which box they checked, correct?

15 A. "Yes" or "No," correct.

16 Q. And so some registrants on these  
17 applications checked "No," correct?

18 A. We found some of them checked "No" to  
19 that question, yes.

20 Q. And there were a few registration  
21 applications in which no box was checked?

22 A. That sounds right, correct.

23 Q. But the vast majority of voter  
24 registrations had the citizenship question  
25 answered yes, correct?

1 A. Correct.

2 Q. PILF didn't limit its Alien Invasion  
3 II report to just those people who had answered  
4 no to the citizenship question, correct?

5 A. Correct.

6 Q. Let's go to page 13 of the Alien  
7 Invasion II report.

8 A. 13? Did you say page 13?

9 Q. Yeah. I'm sorry. Yes, I did.

10 A. Okay, I'm looking at page 13.

11 Q. On the right-hand side, third  
12 paragraph from the bottom, it begins: "In the 16  
13 jurisdictions surveyed, PILF reviewed 764 voter  
14 registration applications submitted by applicants  
15 who were later removed for lacking U.S.  
16 citizenship."

17 Do you see that?

18 A. I see that sentence.

19 Q. And then two paragraphs down it refers  
20 to 702 noncitizen registrants getting on the  
21 voter rolls for checking "Yes" to the citizenship  
22 question, correct?

23 A. That's what the paragraph refers to,  
24 yes.

25 Q. And then the footnote 69, that refers

1 the reader to Exhibit 12. Is that right?

2 A. Footnote 69 refers to Exhibit 12.

3 Q. So of the 764 voter registration  
4 applications reviewed by PILF, 702 answered "Yes"  
5 to the citizenship question, correct?

6 A. That's what's indicated on this page.

7 Q. But PILF in its report calls these 702  
8 registrants noncitizens, correct? On the bottom  
9 of page 13.

10 A. I think the paragraph speaks for  
11 itself.

12 Q. It says 702 noncitizen registrants,  
13 correct?

14 A. The last paragraph does, yes.

15 Q. And you had the phone numbers for  
16 these 702 registrants, correct?

17 A. I don't know if we had phone numbers  
18 for all of them.

19 Q. But for many of them you did because  
20 it's part of the voter registration application,  
21 correct?

22 A. I can't say that we had many either  
23 without looking at them.

24 Q. Well, flip through.

25 A. All 702?

1 Q. I mean, if you have a real doubt that  
2 the voter registration applications contained  
3 people's phone numbers, I guess so.

4 A. I don't have a basis for believing  
5 it's required information.

6 Q. That wasn't the question. The  
7 question was: Isn't it true that for probably  
8 most if not all of the 702 applicants that are  
9 named as noncitizens in the report, you had their  
10 phone numbers, correct?

11 A. Again, I'm not willing to say that I  
12 had them without looking at them.

13 MR. LOCKERBY: Object to the form.

14 "Most" is undefined.

15 THE WITNESS: I'm happy to look  
16 through all 702 if you would like me to.

17 BY MR. TEPE:

18 Q. You appear to be in real doubt as to  
19 whether or not you had people's phone numbers.  
20 So if you want to flip through it.

21 MR. LOCKERBY: Objection. Now counsel  
22 is arguing with the witness. Does the  
23 question about most still stand, or has it  
24 been withdrawn?

25 MR. TEPE: It still stands.

1 THE WITNESS: Then my answer is I do  
2 not recall how many applications contained a  
3 phone number.

4 BY MR. TEPE:

5 Q. It's right in front of you. Do you  
6 want to check?

7 A. No.

8 Q. Why not?

9 A. If you're giving me the option, then I  
10 would rather not look at them.

11 Q. Why don't you go to page 96. I  
12 believe it's flagged.

13 A. Page 96 of what?

14 Q. Of Exhibit 12.

15 A. I don't believe they have page  
16 numbers.

17 Q. It should be flagged. We're looking  
18 for the application of Abby Sharpe Focht.

19 A. I believe I'm looking at it.

20 Q. Ms. Focht, who, for the record, is now  
21 known as Gearhart, checked "Yes" to the question  
22 "Are you a citizen of the United States?"  
23 Correct?

24 A. Yes.

25 Q. Now, when you published her voter

1 registration application as part of Exhibit 12,  
2 PILF knew that her application had not been  
3 canceled, correct?

4 MR. LOCKERBY: Object to the form.

5 MR. TEPE: Strike that.

6 BY MR. TEPE:

7 Q. When PILF published Alien Invasion II  
8 and specifically Ms. Focht's application as part  
9 of Exhibit 12, PILF was aware that her voter  
10 registration had not been canceled, correct?

11 MR. LOCKERBY: Object to the form of  
12 the question. Not only does it assume facts  
13 not in evidence but counsel is required to  
14 have a good faith basis for asking a  
15 question when in fact the sworn testimony of  
16 Ms. Gearhart is that her registration was  
17 canceled at one point.

18 MR. TEPE: Okay.

19 BY MR. TEPE:

20 Q. PILF was aware when it published Alien  
21 Invasion II that Ms. Focht, now Gearhart, knew  
22 that she had affirmed under oath her citizenship,  
23 correct?

24 MR. LOCKERBY: Objection. The  
25 question is vague as to time period.

1 BY MR. TEPE:

2 Q. Any time period.

3 A. We possessed her voter registration  
4 application.

5 Q. And you also possessed her affirmation  
6 of citizenship, correct?

7 A. We did, but I cannot say that I was  
8 aware of it.

9 Q. You can put that to the side for the  
10 moment.

11 (Exhibit 13 marked for identification  
12 and attached hereto.)

13 BY MR. TEPE:

14 Q. The court reporter has marked as  
15 Exhibit 13 a document with the beginning Bates  
16 number of 13234.

17 A. I see that.

18 Q. Do you recognize this document?

19 A. I've seen it before.

20 Q. What do you recognize it to be?

21 A. It's an e-mail from  
22 waltlatham@yorkcounty.gov written to me and  
23 Shawna Powell.

24 Q. And it's dated November 22, 2016?

25 A. The top e-mail is. I'm sorry, the

1 first page of Exhibit 13 is.

2 Q. It's only one e-mail, correct?

3 A. Yes.

4 Q. Now, do you recall that for a period  
5 of time the Virginia Department of Elections took  
6 the position that it could not hand over the  
7 VERIS reports based on their interpretation of  
8 the federal statute?

9 A. Yes, they took that position.

10 Q. And at this point in time, November of  
11 2016, York County was taking the same position,  
12 that it could not hand over the VERIS reports  
13 themselves, correct?

14 A. They were abiding by instructions from  
15 the Department of Elections not to produce the  
16 information requested, or at least the VERIS  
17 report.

18 Q. And so in lieu of that, Mr. Latham,  
19 the general registrar of York County, sent copies  
20 of correspondence with voters to you, correct?

21 A. This e-mail says that he sent -- he  
22 has attached a batch of letters sent to voters  
23 who indicated that they were not citizens.

24 Q. Right. These are copies of the  
25 notices of intent to cancel and affirmation of



1 citizenship forms and voter registration  
2 cancellation notices, correct?

3 A. Those appear to be documents that are  
4 attached to this e-mail.

5 Q. If you go to Bates number 13324. Do  
6 you see that?

7 A. I see that.

8 Q. This is a notice of intent to cancel  
9 directed to Abby Sharpe Focht. Is that right?

10 A. Correct.

11 Q. And it's dated April 13, 2012?

12 A. That's the date on it.

13 Q. And included with that mailing was an  
14 affirmation of citizenship form for her to  
15 complete, correct?

16 A. That's the next page after the notice  
17 of intent to cancel.

18 Q. And in the notice of intent to cancel  
19 from Mr. Latham to Ms. Focht it says: "Please  
20 complete the affirmation of citizenship form and  
21 return it using the enclosed envelope." Right?

22 A. That's what the notice of intent to  
23 cancel says.

24 Q. And it says: "If you do not respond  
25 within 14 days, you will be removed from the list

1 of registered voters." Correct?

2 A. Yes.

3 (Exhibit 14 marked for identification  
4 and attached hereto.)

5 BY MR. TEPE:

6 Q. What has been marked as Exhibit 14  
7 begins with Bates number 13148.

8 A. I see that.

9 Q. Do you recognize this document?

10 A. It's another e-mail from Walt Latham  
11 to me and Shawna Powell.

12 Q. Same day, November 22nd?

13 A. Of 2016.

14 Q. And in the subject line it says:  
15 "York County Va - files requested - batch 3 of  
16 4." Correct?

17 A. That's the top e-mail of this page,  
18 yes.

19 Q. So he was sending you a bunch of  
20 records in four different e-mails. Is that  
21 right?

22 A. Yes.

23 Q. And in this third batch you were sent  
24 the voter registration application of Ms. Focht.  
25 Is that right?

1           A.       I have to look at the -- And what was  
2 attached?

3           Q.       13185.

4           A.       13185 appears to be the application of  
5 Ms. Focht.

6           Q.       And this was the application that was  
7 published in Exhibit 12 to Alien Invasion II,  
8 correct?

9           A.       It appears to be the same, yes.

10                   (Exhibit 15 marked for identification  
11 and attached hereto.)

12 BY MR. TEPE:

13           Q.       The court reporter has marked as  
14 Exhibit 15 a document with the Bates number  
15 13118. Do you see that?

16           A.       I see that.

17           Q.       Do you recognize this document?

18           A.       I've seen it before.

19           Q.       And it's the fourth e-mail of four  
20 from Mr. Latham on November 22nd?

21           A.       That looks right.

22           Q.       And he states here: "And, finally,  
23 here are the responses from voters to our  
24 letters."

25                   Do you see that?

1 A. I see that.

2 Q. Do you understand that to mean that  
3 these were the responses to the notices of intent  
4 to cancel?

5 A. I don't know what I thought it meant  
6 at the time it was received.

7 Q. But you understand that now?

8 A. I understand that to be true now.

9 Q. If you go to the attachment to this  
10 e-mail, not very far in, Bates number 13121.

11 A. I see that.

12 Q. What do you recognize this to be?

13 A. This looks like an affirmation of  
14 citizenship from Ms. Focht.

15 Q. And do you see the "received" stamp at  
16 the bottom?

17 A. I do.

18 Q. It says "Received April 23, 2012"?

19 A. I see that.

20 Q. It was received within two weeks of  
21 the notice of intent to cancel going out,  
22 correct?

23 A. I don't recall the date the notice  
24 went out.

25 Q. Well, go back to the earlier exhibit,

1 Exhibit 13.

2 A. Which page?

3 Q. I believe it's 13324. So the date on  
4 the intent to cancel was April 13th, right?

5 A. I see that, yes.

6 Q. And York County received it on, it  
7 would appear, April 23rd, correct? Based on the  
8 stamp on her affirmation of citizenship form.

9 A. Yes, her affirmation of citizenship,  
10 it says received April 23, 2012.

11 Q. That was within two weeks of the  
12 intent to cancel going out?

13 A. According to these dates, yes.

14 Q. At this time, when Alien Invasion II  
15 was published, what was PILF's basis for saying  
16 that Ms. Focht was a noncitizen?

17 A. I believe her application was  
18 inadvertently included in Exhibit 12.

19 Q. And that was PILF's mistake, correct?

20 MR. LOCKERBY: Object to the form.

21 THE WITNESS: We are the ones who  
22 initially included it in Exhibit 12.

23 BY MR. TEPE:

24 Q. So at the time Alien Invasion II was  
25 published you had two things, right? You had her

1 voter registration application, correct?

2 A. It had been sent to us, correct.

3 Q. And you had her affirmation of  
4 citizenship, correct?

5 A. It had also been included in an e-mail  
6 from Mr. Latham.

7 Q. And they both indicated citizenship,  
8 correct?

9 A. I would have to look back at her  
10 application to know if she checked "Yes" to that  
11 question.

12 Q. We just looked at that. That was  
13 13324. 13185, Exhibit 14.

14 A. 131 --

15 Q. 85.

16 A. Yes, she answered the question "Yes."

17 Q. So the two documents that PILF had  
18 when it published Alien Invasion II indicated  
19 citizenship for Ms. Focht, right?

20 A. We -- we had these two documents.

21 Q. You included one of those documents,  
22 her registration, in Exhibit 12, correct?

23 A. Her application for voter registration  
24 was initially included in Exhibit 12.

25 Q. And Exhibit 12 contained voter

1 registration applications that PILF said were  
2 noncitizens, correct?

3 MR. LOCKERBY: Object to the form.

4 THE WITNESS: Only based on our  
5 understanding of what was -- should have  
6 been included in there. Again, her  
7 application was -- the inclusion of her  
8 application was inadvertent.

9 BY MR. TEPE:

10 Q. And that was an inadvertent mistake by  
11 PILF, correct?

12 MR. LOCKERBY: Object to the form.

13 THE WITNESS: Again, I said it was  
14 inadvertent, yes.

15 BY MR. TEPE:

16 Q. And it was a mistake by PILF, correct?

17 A. The foundation is the one who included  
18 it. Yes.

19 Q. It wasn't the fault or an error by the  
20 Virginia Department of Elections, correct?

21 A. Well, I believe there was a subsequent  
22 e-mail from Mr. Latham in which he explained that  
23 he had included correspondence from voters who  
24 later affirmed their citizenship. He never  
25 mentioned that he had included registration

1 applications of those same voters.

2 Q. My question was: Isn't it true that  
3 the inclusion of Ms. Focht's voter registration  
4 application in Exhibit 12 of Alien Invasion II  
5 was not the fault of the Virginia Department of  
6 Elections?

7 MR. LOCKERBY: Object to the form.

8 Asked and answered.

9 THE WITNESS: They were not sent to us  
10 by the Virginia Department of Elections, no.

11 BY MR. TEPE:

12 Q. But PILF blamed the Virginia  
13 Department of Elections for Ms. Focht's  
14 application getting into Exhibit 12. Isn't that  
15 right?

16 MR. LOCKERBY: Object to the form.

17 THE WITNESS: I'm not aware of that  
18 accusation.

19 MR. TEPE: Do you want to take a  
20 break?

21 MR. LOCKERBY: This is probably a good  
22 time.

23 MR. TEPE: Why don't we go off the  
24 record.

25 THE VIDEOGRAPHER: We are going off



1 the record. The time is 12:07 p.m.

2 (Recess taken.)

3 THE VIDEOGRAPHER: We are back on the  
4 record. The time is 12:18 p.m.

5 BY MR. TEPE:

6 Q. Still on the topic of Alien Invasion  
7 II, Mr. Johnson, let's discuss an individual who  
8 troubled you even before Alien Invasion II was  
9 published. Do you know who I'm referring to?

10 A. No.

11 Q. Do you want to go to page 10 of Alien  
12 Invasion II?

13 A. I'm on page 10.

14 Q. At the very top left there is an  
15 individual named Maureen H. Erickson mentioned in  
16 the report.

17 A. I see that.

18 Q. Now, before she was mentioned in Alien  
19 Invasion II, you thought she might be a citizen.  
20 Is that right?

21 A. I don't recall that.

22 (Exhibit 16 marked for identification  
23 and attached hereto.)

24 BY MR. TEPE:

25 Q. The court reporter has handed you

1 what's been marked as Exhibit 16, Bates number  
2 210. Do you see that?

3 A. I see it.

4 Q. Do you recognize this document?

5 A. I have seen this before, yes.

6 Q. And it is an e-mail discussing Maureen  
7 Erickson, correct?

8 A. Some of it appears to discuss her,  
9 yes.

10 Q. So this e-mail chain is dated June 19,  
11 2017, right?

12 A. Yes.

13 Q. So that was just two and a half weeks  
14 after Alien Invasion II was published, right?

15 A. That sounds about the right amount of  
16 time.

17 Q. And I understand there was an article  
18 that -- in the media that pointed out that  
19 Maureen Erickson was a U.S. citizen, correct?

20 A. Yes. I think I remember the article  
21 that her husband or father had informed the  
22 media -- they claimed that she was a U.S.  
23 citizen, yes.

24 Q. Do you have any basis to dispute that  
25 claim?

1           A.       Other than her inclusion on the VERIS  
2     report, no.

3           Q.       That her registration had at one time  
4     been canceled?

5           A.       Under the designation declared  
6     noncitizen, yes. Other than that, I have no  
7     reason to.

8           Q.       On June 19th you wrote with regard to  
9     Ms. Erickson: "It troubled me too."

10                  Do you see that?

11           A.       I see that.

12           Q.       What troubled you?

13           A.       I think it troubled me that I could  
14     not verify the requirements of UOCAVA.

15           Q.       What is UOCAVA?

16           A.       The Uniformed and Overseas Citizens  
17     Voter Act. I'm not sure what the other letters  
18     mean.

19           Q.       So just taking a step back, on the  
20     VERIS report for Prince William County there was  
21     a Guatemalan address, correct?

22           A.       I think we determined it was in  
23     Guatemala, yes.

24           Q.       But just because someone is residing  
25     abroad doesn't mean that they can't, if they're

1 citizens, vote in U.S. elections, correct?

2 A. Correct.

3 Q. Now, why did PILF highlight her in the  
4 text of Alien Invasion II? Do you recall?

5 A. I believe it was because of the  
6 indication that she resided at a foreign address,  
7 which was unique to her among those on the list.

8 Q. But at the time, you knew that just  
9 residing at a foreign address didn't necessarily  
10 indicate one way or another about citizenship,  
11 right?

12 A. Correct.

13 Q. In your e-mail you said: "If it  
14 wasn't her, it would be someone else they could  
15 dig up that was actually a citizen."

16 Do you see that?

17 A. I see that.

18 Q. What did you mean by that?

19 A. I believe I was predicting that the  
20 reports would come under scrutiny and that there  
21 would be an effort to try to verify that someone  
22 on these lists was actually a citizen. Which is  
23 what happened.

24 Q. At the time you understood that there  
25 was a chance that some of the people identified

1 in Alien Invasion II were in fact citizens,  
2 correct?

3 A. Well, I was referring to the claim  
4 that Maureen Erickson was a citizen.

5 Q. No, I understand. I'm asking a  
6 different question, which is at the time Alien  
7 Invasion II was published you recognized that  
8 some of those people on the list are citizens,  
9 right?

10 A. That's my understanding now. I  
11 understand that when they were canceled, they  
12 were canceled for citizenship reasons, and they  
13 could have since then become citizens.

14 Q. But certainly on June 19th you  
15 recognized that, if it wasn't Maureen Erickson,  
16 there would be someone else on the list published  
17 with Alien Invasion II that would actually be a  
18 citizen?

19 MR. LOCKERBY: Object to the form.

20 THE WITNESS: I think I was  
21 speculating that could be a possibility,  
22 yes.

23 BY MR. TEPE:

24 Q. And in fact, you had knowledge of --  
25 Strike that.

1           So before Alien Invasion II was  
2 published, you knew that people listed in the  
3 exhibits to Alien Invasion II had reregistered  
4 after their registration had been canceled,  
5 correct?

6           A.     I don't recall having that knowledge  
7 at the time necessarily. I recognize now that  
8 there's notations on them suggesting that they  
9 reregistered.

10          Q.     And specifically today we looked at  
11 Bedford County as an example, right?

12          A.     We did, yes.

13          Q.     Are you -- is it your testimony that  
14 you didn't look at the records sent to you to  
15 verify that these people had not reregistered?

16                 MR. LOCKERBY: Objection; misstates  
17 the witness's testimony.

18                 THE WITNESS: I'm not following the  
19 question.

20 BY MR. TEPE:

21          Q.     So before Alien Invasion II was  
22 published, you possessed information that people  
23 listed in the exhibits to Alien Invasion II had  
24 reregistered after their registration had been  
25 canceled, correct?

1 A. Yes.

2 Q. And before Alien Invasion II was  
3 published, you had information that people listed  
4 in the exhibits to Alien Invasion II had affirmed  
5 their citizenship under oath, correct?

6 A. Yes, we had documents showing that  
7 they checked "Yes" to the citizenship question at  
8 some point in time.

9 Q. And before Alien Invasion II was  
10 published, you had information indicating that  
11 what Alien Invasion II calls 5556 noncitizens  
12 includes people who are likely citizens?

13 A. No, I disagree with the  
14 characterization. And I don't know what "likely"  
15 means.

16 Q. Why was Alien Invasion II published in  
17 May of 2017 as opposed to some other time?

18 A. I don't recall.

19 Q. Isn't it the case that there was some  
20 urgency to get the report published in May of  
21 2017?

22 A. I might recall an e-mail to that  
23 effect, but I don't know what the urgency was.

24 Q. The court reporter has handed you a  
25 document that was previously marked as VVA

1 Deposition Exhibit 26.

2 A. I see that.

3 Q. And it has the Bates number 1233. Do  
4 you see that?

5 A. I do.

6 Q. Do you recognize this document?

7 A. Yes, I've seen it before.

8 Q. It's an e-mail that you sent on  
9 May 17, 2017, to Reagan George. Do you see that?

10 A. Yes, I do see that.

11 Q. Copying Logan Churchwell?

12 A. Yes, I see that.

13 Q. Who is also at PILF, right?

14 A. He is.

15 Q. You wrote to Mr. George: "I don't  
16 mean to beat a dead horse but some issues on our  
17 end have us needing to get our report out ASAP.  
18 Whatever you can do to press this urgency with  
19 the people running the voter history, that would  
20 be appreciated."

21 Do you see that?

22 A. I see that.

23 Q. Do you recall having conversations  
24 with Mr. George about this urgency?

25 A. I vaguely recall this e-mail. It



1 suggests that I had told him about it before, but  
2 I don't recall anything specific.

3 Q. Well, you say: "I don't mean to beat  
4 a dead horse." Usually that expression is used  
5 when you've told someone something before,  
6 correct?

7 A. Right. That's what I mean by it  
8 suggests I mentioned this to him before.

9 Q. And you have no basis to say that you  
10 didn't tell him that there was some urgency to  
11 getting Alien Invasion II published?

12 A. No, nothing to suggest I did not  
13 mention this before.

14 Q. Was the reason Alien Invasion II was  
15 published in May of 2017 related to the fact that  
16 Mr. Adams wanted to piggyback on President  
17 Trump's announcement of the Voter Fraud  
18 Commission?

19 MR. LOCKERBY: Object to the form.

20 THE WITNESS: Right. The phrasing is  
21 a little vague. I do recall something about  
22 the timing. I don't remember why  
23 specifically.

24 BY MR. TEPE:

25 Q. The court reporter has handed over a

1 document that's been previously marked as VVA  
2 Deposition Exhibit 27.

3 A. I see that.

4 Q. Do you recognize this document?

5 A. Only vaguely.

6 Q. At the bottom of the document, meaning  
7 the first e-mail, the e-mail from Reagan George  
8 on May 17, 2017, to a Steve and a Nancy. Do you  
9 see that?

10 A. On May 17th?

11 Q. Yes.

12 A. Yes, I see that.

13 Q. Do you know who Steve and Nancy are?

14 A. I mean, I'm familiar with them because  
15 of some of these correspondence, but I do not  
16 recall who they are specifically.

17 Q. Well, Mr. George here writes:  
18 "Christian is wanting to get their article  
19 written ASAP to piggyback on Trump's announcement  
20 of the Voter Fraud Commission."

21 Do you see that?

22 A. I see that.

23 Q. Do you recall telling Mr. George that  
24 this was the reason why PILF wanted to get Alien  
25 Invasion II written ASAP?

1                   MR. LOCKERBY: Object to the form of  
2                   the question.

3                   THE WITNESS: I don't recall telling  
4                   Mr. George that that was the reason for the  
5                   urgency.

6 BY MR. TEPE:

7                   Q. Do you recall telling Mr. George that  
8                   there was some other reason for the urgency?

9                   A. No.

10                  Q. Do you recall having any  
11                  conversations, not with Mr. George but with  
12                  others at PILF, about the urgency to get Alien  
13                  Invasion II published?

14                  A. I don't recall having those  
15                  conversations. Other than the fact that Logan  
16                  Churchwell was included on this previous exhibit  
17                  with Mr. George.

18                  Q. How did you receive the records that  
19                  you used from -- Strike that.

20                         How did you receive the records that  
21                  election officials sent to you and that were used  
22                  in Alien Invasion II?

23                  A. Some of them were received in the  
24                  mail, and I think some of them were received via  
25                  e-mail. It's possible but I don't -- it's

1 possible that some registrars gave us removable  
2 media that included records, but I couldn't say  
3 for sure.

4 Q. And they would have mailed that out to  
5 you?

6 A. That would have also been mailed.

7 Q. So none of the records you relied on  
8 for Alien Invasion II came from people visiting  
9 the jurisdictions and collecting records,  
10 correct?

11 A. No, I think some of them were  
12 collected in person.

13 Q. Which ones?

14 A. I don't recall the specific  
15 jurisdictions.

16 Q. Well, Alien Invasion -- excuse me,  
17 Exhibit 1 to Alien Invasion II came by e-mail  
18 from the Virginia Department of Elections,  
19 correct?

20 A. Yes.

21 Q. And the other bulk of records that you  
22 used for Alien Invasion II are contained in  
23 Exhibit 12, correct? The voter registration  
24 applications?

25 A. Exhibit 12 was the registration

1 applications.

2 Q. And how did PILF come to obtain those  
3 records?

4 A. I believe individual registrars sent  
5 us VERIS reports that pertained to their specific  
6 jurisdictions, and we then asked the registrars  
7 for applications for anyone included on those  
8 lists in a subsequent request.

9 MR. TEPE: Break for lunch?

10 THE WITNESS: Sure.

11 MR. LOCKERBY: Works for me.

12 THE VIDEOGRAPHER: We are going off  
13 the record. The time is 12:46 p.m.

14 (Recess taken.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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AFTERNOON SESSION

1:17 p.m.  
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THE VIDEOGRAPHER: We are back on the  
record. The time is 1:17 p.m.

BY MR. TEPE:

Q. Mr. Johnson, you understand you're  
still under oath, correct?

A. I do understand that.

Q. Have you ever discussed the Alien  
Invasion reports with a prosecutor?

A. I have not, no.

Q. Have you ever discussed with a  
prosecutor the subject of a noncitizen voting  
generally?

A. I don't believe so, no.

Q. Have you ever discussed the outreach  
to Virginia prosecutors with other PILF  
personnel?

A. I don't recall.

Q. You may have?

A. I may have.

Q. Now, in Alien Invasion II, as we saw  
earlier in your testimony, PILF recommended

1 prosecution of noncitizen registrants, correct?

2 MR. LOCKERBY: Object to the form.

3 THE WITNESS: I believe my testimony  
4 was that we recommended a response from law  
5 enforcement officials. And that response  
6 included investigation and, if grounds  
7 existed, for prosecution.

8 BY MR. TEPE:

9 Q. And we also discussed that PILF  
10 thought that voter registration and voting  
11 history records such as those contained in Alien  
12 Invasion II made prosecution an easy task,  
13 correct?

14 A. Is that a quote from the report?

15 Q. If you want to refresh your  
16 recollection, you can go to page 16 of Alien  
17 Invasion II.

18 A. Yes, it sounds like you're quoting the  
19 last paragraph next to the last checkmark on page  
20 60.

21 Q. And this was one of the  
22 recommendations?

23 A. It's in the recommendation section,  
24 yes.

25 Q. And to make that task even easier,

1 PILF actually sent records to prosecutors,  
2 correct?

3 A. I believe so, yes.

4 (Exhibit 17 marked for identification  
5 and attached hereto.)

6 BY MR. TEPE:

7 Q. The court reporter has just handed you  
8 what's been marked as Exhibit 17 with the  
9 beginning Bates number 782.

10 Do you see that?

11 A. I see that.

12 Q. Do you recognize this document?

13 A. I've seen it before, yes.

14 Q. The first page is an e-mail from you  
15 to Mr. Adams and others entitled -- or the  
16 subject line is "Mailing list," correct?

17 A. Yes.

18 Q. And this is May 26, 2017?

19 A. Yes.

20 Q. So this is just a few days before  
21 Alien Invasion II was published, correct?

22 A. Yes.

23 Q. And you write: "Here is the mailing  
24 list. It should have everyone on the list you  
25 sent and the people we discussed this morning."



1 Do you see that?

2 A. I see that.

3 Q. And there is also a proposed cover  
4 letter attached, correct?

5 A. Right. It's not in the exhibit, but  
6 it looks like it's attached to the e-mail.

7 Q. You don't have a copy of the -- it's  
8 the last page.

9 A. Oh, last page?

10 Q. Yes.

11 A. Yes, I see that now.

12 Q. This is a draft of a letter that would  
13 go to the individuals listed in the mailing list,  
14 correct?

15 A. It appears to be, yes.

16 Q. The first sentence of the draft letter  
17 says: "Some people claim there is no voter  
18 fraud. The enclosed report refutes that claim."

19 Do you see that?

20 A. I see that.

21 Q. Before Alien Invasion II was  
22 published, did you believe that noncitizen voter  
23 fraud was a problem?

24 A. Before Alien II was published?

25 Q. Yes.

1 A. Yes, I did.

2 Q. And was one of the motivations of  
3 engaging in the project that resulted in Alien  
4 Invasion I and Alien Invasion II seeking to find  
5 proof of voter fraud?

6 A. I would characterize that as one of  
7 the motivations. Maybe not just proof but the  
8 extent of voter fraud.

9 Q. That there was a significant amount of  
10 it existing, correct?

11 A. Well, we were exploring what the  
12 extent was.

13 Q. So this e-mail attaches a list, a  
14 mailing list, correct? Why don't we take a look  
15 at that.

16 A. It does say that a mailing list is  
17 attached.

18 Q. And in fact, a mailing list was  
19 attached, correct?

20 A. Yes.

21 Q. So let's just go through this list.  
22 The top of the list, there are a bunch of members  
23 of the general assembly on the mailing list. Is  
24 that right?

25 A. I don't have a copy of the list. It

1 simply says produced in native format.

2 MR. TEPE: Okay. Why don't we just  
3 briefly go off the record.

4 THE VIDEOGRAPHER: We are going off  
5 the record. The time is 1:24 p.m.

6 (Off the record.)

7 THE VIDEOGRAPHER: We are back on the  
8 record. The time is 1:30 p.m.

9 BY MR. TEPE:

10 Q. Okay. So just to begin, we're looking  
11 at Exhibit 17, Bates 782, correct, on the front  
12 page?

13 A. 782 on the front page of the exhibit?

14 Q. Yes. So this is Exhibit 17.

15 A. Yes.

16 Q. An e-mail from you to Mr. Adams and  
17 others attaching a mailing list, correct?

18 A. Correct.

19 Q. And this is May 26, 2017?

20 A. Yes.

21 Q. This is a few days before Alien  
22 Invasion II was published, correct?

23 A. Yes.

24 Q. And so this is a list of people that  
25 PILF was planning on sending copies of the Alien

1 Invasion II report to, correct?

2 A. I believe so, yeah.

3 Q. If you take a look at the mailing  
4 list, on the third page of the mailing list there  
5 are a number of commonwealth attorneys listed.  
6 Do you see that?

7 A. I see that.

8 Q. There is also the U.S. attorney for  
9 the Eastern District of Virginia, correct?

10 A. I see that, yeah.

11 Q. The U.S. attorney for the Western  
12 District of Virginia, correct?

13 A. I see that.

14 Q. The deputy assistant attorney general  
15 of the United States?

16 A. I see that.

17 Q. And they were sent a copy of the  
18 complete Alien Invasion report?

19 A. I don't have personal knowledge that  
20 they were sent one. No, I don't.

21 Q. Do you have personal knowledge that  
22 they were sent at least a portion of the Alien  
23 Invasion II report?

24 A. What I mean is I didn't handle the  
25 mailings, so I don't have knowledge if it's

1 complete or incomplete.

2 Q. Okay. But certainly you were aware of  
3 the plan to send to prosecutors the Alien  
4 Invasion II report, correct?

5 A. Yes.

6 Q. Who was in charge of the mailing? Do  
7 you recall?

8 A. I believe Shawna Powell.

9 Q. Are you aware of whether or not any  
10 commonwealth attorneys responded to a mailing?

11 A. I don't recall any responses, or  
12 having seen any.

13 Q. Do you recall follow-up phone calls  
14 that PILF made to prosecutors?

15 A. I do not recall any phone calls.

16 Q. Do you recall follow-up e-mails with  
17 prosecutors regarding the Alien Invasion II?

18 A. I don't recall seeing any e-mails  
19 from -- that included any prosecutors.

20 (Exhibit 18 marked for identification  
21 and attached hereto.)

22 BY MR. TEPE:

23 Q. The court reporter has just handed you  
24 an exhibit that's been marked Exhibit 18 with the  
25 Bates number 7382. Do you see that?

1 A. I see that.

2 Q. Do you recognize this document?

3 A. I have seen this before.

4 Q. This is an e-mail from you dated  
5 June 27, 2017, correct?

6 A. The top e-mail is, yes.

7 Q. And it's to Ms. Powell, Mr. Adams and  
8 Mr. Churchwell, correct?

9 A. Correct.

10 Q. And does it appear to be a draft  
11 e-mail from Shawna Powell to the Newport News  
12 commonwealth attorney?

13 A. It does, yes.

14 Q. And in this letter -- it seems to be  
15 the e-mail is in the form of a letter. Is that  
16 fair?

17 A. Yes, the body of the e-mail.

18 Q. The draft e-mail?

19 A. The draft e-mail was in the form of a  
20 letter.

21 Q. And the draft e-mail says: "Dear  
22 Mr. Gywnn, thank you for speaking with me on the  
23 phone yesterday. Per our conversation, I have  
24 attached the list of noncitizens removed for  
25 citizen issues from Newport News' voter rolls

1 from January 1, 2011, to May 22, 2017."

2 Do you see that?

3 A. I see that.

4 Q. Does this document refresh your  
5 recollection that there were phone calls with at  
6 least one commonwealth attorney?

7 A. I don't -- again do not recall having  
8 heard about this when it happened. But it  
9 does -- it is an e-mail I've seen before.

10 Q. Do you know who was making phone calls  
11 from PILF to commonwealth attorneys?

12 A. The specific one seems to indicate  
13 that Shawna at least spoke with the attorney in  
14 Newport News.

15 Q. Do you know of anyone else having  
16 phone calls with commonwealth attorneys?

17 A. One -- I recall an e-mail discussing a  
18 meeting that Mr. Adams intended to have with a  
19 commonwealth attorney or a U.S. attorney. Other  
20 communications like this, I do not recall.

21 (Exhibit 19 marked for identification  
22 and attached hereto.)

23 BY MR. TEPE:

24 Q. The court reporter has marked as  
25 Exhibit 19 a document with Bates number 13405.

1 Do you see that?

2 A. I see that.

3 Q. You just previously testified that you  
4 recall discussing a meeting Mr. Adams intended to  
5 have with either a commonwealth attorney or a  
6 U.S. attorney, correct?

7 A. I did say that, yes.

8 Q. Taking a look at this document, does  
9 this refresh your recollection?

10 A. Looking at this, I think this is the  
11 e-mail that I was remembering.

12 Q. Okay. So let's start with the e-mail  
13 at the bottom, November 21st. It's on the second  
14 page. November 21, 2016, at 9:30 a.m., an e-mail  
15 from Mr. Adams. Do you see that?

16 A. I see that.

17 Q. He says: "The list of alien name  
18 printouts not in our report. Remember, we did  
19 not put them all in as I recall. Also voter  
20 history, voter names if you have them. I'm  
21 talking to U.S. attorney in charge of prosecuting  
22 them early afternoon. Do so as soon as possible.  
23 Thanks, very important."

24 Do you see that?

25 A. I see that.



1 Q. And then you respond at 9:42 a.m., the  
2 same day to Mr. Adams saying you will look ASAP.  
3 Do you see that?

4 A. I see that.

5 Q. So as I understand, Mr. Adams is  
6 looking for the names of the people who were used  
7 to support Alien Invasion I, correct?

8 A. Yes, I believe that's what he's asking  
9 for.

10 Q. And then in the e-mail above that he  
11 specifies that "I'm meeting with EDVA US  
12 attorney's office." Do you see that?

13 A. I do see that.

14 Q. And then you respond: "Gotcha. I'll  
15 send what we have and check with Reagan on  
16 names."

17 Do you see that?

18 A. I see that.

19 Q. That's Reagan George?

20 A. That's what Reagan refers to.

21 Q. And then Mr. Adams responds: "I'm  
22 more worried about getting the other counties we  
23 have alien removal lists from. That's an ASAP  
24 project. The report did not include them."

25 Do you see that?

1 A. I see that.

2 Q. So am I understanding this correctly  
3 that in Alien Invasion I, some of the records  
4 were included and some were not, correct?

5 A. Records meaning VERIS reports?

6 Q. As an example, yes.

7 A. Yes.

8 Q. So as we discussed earlier, Alien  
9 Invasion I had a VERIS report from Prince William  
10 County but not the other counties?

11 A. Correct.

12 Q. And so is this Mr. Adams here asking  
13 for the records for the other counties?

14 MR. LOCKERBY: Object to the form.

15 THE WITNESS: That's how I understood  
16 this, yes.

17 BY MR. TEPE:

18 Q. That's how you understood it?

19 A. (Nodding head.)

20 Q. And then also was he requesting the  
21 analysis that would match these registrants with  
22 voter history?

23 A. That's what it sounds like, yes.

24 Q. And then Mr. Adams wrote: "Remember,  
25 this was intended to be a turnkey prosecution for

1 officials. I could hand them the report and they  
2 could virtually get a grand jury indictment."

3 Do you see that?

4 A. I see that.

5 Q. Do you recall whether or not you  
6 provided the lists and records requested by  
7 Mr. Adams?

8 A. I don't recall if I did. I don't know  
9 why I would not have, though.

10 Q. Do you recall following up with  
11 Mr. George about this?

12 A. I don't recall that either.

13 (Exhibit 20 marked for identification  
14 and attached hereto.)

15 BY MR. TEPE:

16 Q. The court reporter has handed you  
17 what's been marked as Exhibit 20 with Bates  
18 number 3261.

19 Do you recognize this document?

20 A. I've seen this before, I think, yeah.

21 Q. This is an e-mail from you to  
22 Mr. George on November 21st at 9:48 a.m.

23 A. Yes.

24 Q. And so this was just a few minutes  
25 after Mr. Adams had e-mailed his request that we

1 saw in the previous exhibit? 9:30 p.m.

2 A. Yes, that sounds right. It looks  
3 right.

4 Q. The first e-mail.

5 A. This one?

6 MR. HANSON: The second page.

7 THE WITNESS: Yeah, that's after the  
8 first e-mail from Mr. Adams.

9 BY MR. TEPE:

10 Q. So you got the e-mail from Mr. Adams  
11 at 9:30 requesting this information, right?

12 A. Right.

13 Q. And then 18 minutes later you follow  
14 up with Mr. George, correct?

15 A. Yes.

16 Q. And you wrote: "Reagan, Christian is  
17 meeting with U.S. attorney's office today. Need  
18 info ASAP."

19 Do you see that?

20 A. I see that.

21 Q. Do you recall getting information from  
22 Mr. George?

23 A. I don't recall if I got it from him or  
24 not.

25 Q. Would your answer be the same as to

1     what I asked before, that you don't recall but  
2     you have no reason to believe that you would not  
3     have provided Mr. Adams with the information he  
4     requested?

5           A.     Not necessarily. I can only speak to  
6     what I might have done. I don't know about  
7     Mr. George's responsiveness.

8           Q.     Right. But you would -- if you were  
9     the one receiving it, you would know that, right?

10          A.     If I did receive it, then I would have  
11     sent it to Christian.

12          Q.     Do you know if Mr. Adams met with this  
13     EDVA U.S. attorney prosecutor?

14          A.     I don't recall if he did or not.

15          Q.     Are you aware of any other instances  
16     in which Mr. Adams may have met with law  
17     enforcement to discuss the Alien Invasion  
18     reports?

19          A.     I don't recall other instances.

20          Q.     Are you aware of any instances in  
21     which someone else affiliated with PILF other  
22     than Mr. Adams met with law enforcement to  
23     discuss the Alien Invasion reports?

24          A.     No.

25                   (Exhibit 21 marked for identification)

1 and attached hereto.)

2 BY MR. TEPE:

3 Q. The court reporter has just handed you  
4 a document that's been marked as Exhibit 21 with  
5 the Bates number 7468.

6 Do you recognize this document?

7 A. Vaguely.

8 Q. What do you recognize it to be?

9 A. It's an e-mail between myself and  
10 Logan Churchwell regarding -- the subject says  
11 Alabama letter.

12 Q. Is that a shorthand for a letter that  
13 was to be sent to Attorney General Sessions?

14 A. It looks like it was.

15 Q. So this e-mail is dated October 11,  
16 2018, correct?

17 A. Yes.

18 Q. And attached to that letter is an  
19 edited version of a PILF press release, correct?

20 A. Yes.

21 Q. Now, this letter -- excuse me. Strike  
22 that.

23 This press release states, this draft  
24 press release states: "Public Interest Legal  
25 Foundation today praised a congressional letter

1 directed to U.S. Attorney Jeff Sessions urging  
2 that federal prosecutors dedicate resources to  
3 investigation and pursue noncitizens casting  
4 ballots."

5 Do you see that?

6 A. I see that.

7 Q. This letter was signed by 23 members  
8 of Congress. Do you see that?

9 A. I see that.

10 Q. And then two paragraphs below that the  
11 press release states: "The letter marks  
12 particular concern for 'sanctuary' cities and  
13 counties which 'already refuse to cooperate with  
14 federal immigration authorities' and could  
15 tolerate 'false claims of citizenship being made  
16 during voter registration.'"

17 Do you see that?

18 A. I see that.

19 Q. "The letter" -- continuing on the  
20 press release: "The letter references the Public  
21 Interest Legal Foundation's August 2018 report  
22 'Safe Spaces: How Sanctuary Cities Are Giving  
23 Cover to Noncitizens on the Voter Rolls' which  
24 documented over 3100 incidences of noncitizen  
25 registration."

1 Do you see that?

2 A. I see that.

3 Q. Do you know how Congress -- these  
4 Congress members, these 23 members of Congress in  
5 their letter came to obtain the Safe Spaces  
6 report of PILF?

7 A. I'm not familiar with how they might  
8 have.

9 Q. Are you aware of whether or not PILF  
10 worked with members of Congress on their letter  
11 to Attorney General Sessions?

12 A. I'm not familiar. I don't recall if  
13 they did or not.

14 Q. And then in the next paragraph the  
15 press release states: "'The Foundation  
16 appreciates Rep. Mo Brooks' leadership in  
17 Congress and his efforts to keep this matter on  
18 the minds of DOJ leadership,' PILF Communications  
19 and Research Director Logan Churchwell said."

20 Do you see that?

21 A. I see that.

22 Q. The quote continues: "We can't  
23 underestimate the deterrent power that  
24 prosecution carries here. The Foundation will be  
25 providing new investigative leads to U.S.



1 Attorneys in the weeks ahead."

2 Do you see that?

3 A. I do see that.

4 Q. Are you aware of the new investigative  
5 leads to U.S. attorneys that is referenced here  
6 in this press release?

7 A. I believe I'm familiar with one  
8 instance.

9 Q. What instance is that?

10 A. I believe Mr. Churchwell transmitted a  
11 list of potential noncitizens to the U.S.  
12 attorney's office in Texas. I think El Paso  
13 specifically.

14 Q. Are you aware of any additional  
15 communications with U.S. attorneys with respect  
16 to individuals residing in Virginia?

17 A. No, I'm not familiar.

18 Q. The sentence that says "We can't  
19 underestimate the current power that prosecution  
20 carries here."

21 Do you see that?

22 A. I do.

23 Q. Do you agree with that statement?

24 A. I agree that prosecution carries with  
25 it the power to deter future crime.

1 Q. Would you agree that prosecution --  
2 Strike that.

3 Would you agree with the statement  
4 that investigation by prosecutors would carry  
5 with it deterrent power?

6 A. Not in and of itself.

7 Q. Why is that?

8 A. Well, investigations are often not  
9 public whereas prosecutions typically are. You  
10 usually can't be deterred by something you don't  
11 know about.

12 Q. Any other basis?

13 A. I can't think of any.

14 Q. Your answer said investigations are  
15 often not public whereas prosecutions typically  
16 are. Is that right?

17 A. I believe that was my testimony.

18 Q. So if an investigation was publicized,  
19 do you believe that would have some deterrent  
20 value?

21 A. Yeah, it could.

22 Q. Do you believe that if people were  
23 accused publicly of engaging in illegal conduct,  
24 that that could potentially deter other people  
25 from engaging in conduct similar to that alleged?

1           A.       Well, it depends on who is doing the  
2     accusing.

3           Q.       How so?

4           A.       If law enforcement was to accuse  
5     someone of a crime, that would carry more weight  
6     than if, say, I did it personally. The deterrent  
7     effect would be, I think, greater if the  
8     accusation came from someone with the power to  
9     investigate or prosecute.

10          Q.       You can put that document aside.

11                   Were you involved in efforts to  
12     promote the Alien Invasion reports?

13          A.       Yes.

14          Q.       What was your role in that?

15          A.       Well, I appeared before the Privileges  
16     and Elections Committee of the Virginia general  
17     assembly, and I believe I mentioned an appearance  
18     on the Bret Baier show.

19          Q.       Do you recall other activities that  
20     you engaged in to promote the Alien Invasion  
21     reports?

22          A.       I don't recall any other promotion,  
23     no.

24          Q.       Who was in charge of the effort to  
25     promote the Alien Invasion reports at PILF?

1           A.       To various -- to varying degrees it  
2 was a group effort.

3           Q.       Was anyone in charge of that effort?

4           A.       The second Alien Invasion report when  
5 it was published, we had hired Logan Churchwell  
6 as our communications director. He did most of  
7 the promotion, to my knowledge, of the second  
8 report in addition to Mr. Adams, whatever  
9 appearances he may have done. But I would not  
10 say someone was in charge.

11          Q.       But there was an effort to widely  
12 disseminate the Alien Invasion reports, correct?

13               MR. LOCKERBY: Object to the form.

14               THE WITNESS: There was an effort to  
15 disseminate, yes.

16 BY MR. TEPE:

17          Q.       So with respect to Alien Invasion I,  
18 do you recall PILF issuing a press release?

19          A.       I do.

20               (Exhibit 22 marked for identification  
21 and attached hereto.)

22 BY MR. TEPE:

23          Q.       The court reporter has handed you  
24 Exhibit 22 with the Bates 13683.

25               Do you recognize this document?

1           A.     I think I've seen it, but I don't -- I  
2     don't remember having seen it.

3           Q.     The first e-mail appears to be an  
4     e-mail press release dated October 4, 2016. Is  
5     that right?

6           A.     Yes.

7           Q.     And was this sent to a media list that  
8     PILF keeps?

9           A.     It was sent to a media list. I don't  
10    know who the recipients were based on looking at  
11    this.

12          Q.     The subject line says "1000 plus  
13    noncitizens discovered on voter rolls in  
14    Virginia." Is that right?

15          A.     Yes.

16          Q.     And then when you turn the page over,  
17    the press release begins: "A Public Interest  
18    Legal Foundation investigation has uncovered over  
19    1000 noncitizens who have registered to vote in  
20    just eight of Virginia's 132 voting  
21    jurisdictions."

22                   Do you see that?

23          A.     I see that.

24          Q.     It continues: "These ineligible  
25    voters have cast nearly 200 ballots in American

1 elections. Each fraudulent registration and vote  
2 is a potential felony."

3 Do you see that?

4 A. I do see that.

5 Q. And so sending a press release to  
6 media was one activity engaged in by PILF to  
7 publicize Alien Invasion I, correct?

8 A. Yes.

9 Q. And weren't there appearances on TV as  
10 well to promote Alien Invasion I?

11 A. I'm not recalling any specifically.

12 Q. Do you recall Alien Invasion I being  
13 unveiled on TV exclusively with Fox & Friends?

14 A. Vaguely. I recall from an earlier  
15 e-mail you showed me that Christian mentioned an  
16 appearance on Fox.

17 (Exhibit 23 marked for identification  
18 and attached hereto.)

19 MR. TEPE: The court reporter has just  
20 marked and handed to the witness what has  
21 been marked as Exhibit 23, a document with  
22 Bates number 5600.

23 BY MR. TEPE:

24 Q. Do you see that?

25 A. I see that.

1 Q. And what does it appear to be?

2 A. It's an e-mail at the top from me to  
3 Christian copying Reagan George and Shawna  
4 Powell. And the e-mail below that is an e-mail  
5 from Mr. Adams, I believe, to -- it doesn't say  
6 who it's to.

7 Q. But presumably it's to you since  
8 you're responding to it, correct?

9 A. Yes.

10 Q. And this e-mail is dated September  
11 30th from Mr. Adams?

12 A. Yes.

13 Q. And Mr. Adams writes: "I need to get  
14 the Fox News producers a near final version of  
15 the report in the early afternoon. I will be on  
16 Fox & Friends in the a.m. to talk about it."

17 Do you see that?

18 A. I see that.

19 Q. Then it continues: "Realize the most  
20 important thing is the summary."

21 Did you talk about the summary of the  
22 Alien Invasion II report?

23 A. I think that's what he's referring to.

24 Q. "Nobody there will read past that so  
25 the summary has to look good and easy to read and

1       avoid any legalese."

2                   Do you see that?

3           A.       I see that.

4           Q.       Then you respond: "Understood. We'll  
5 talk and I'll have it to you by then."

6                   Do you recall any other television  
7 appearances by Mr. Adams in promoting the Alien  
8 Invasion I report?

9           A.       I do not recall any.

10          Q.       But there -- do you recall doing a  
11 phone interview with a radio station to promote  
12 Alien Invasion I?

13          A.       Me?

14          Q.       Yes.

15          A.       Vaguely.

16                   (Exhibit 24 marked for identification  
17 and attached hereto.)

18                   MR. TEPE: The court reporter has just  
19 handed the witness a document marked  
20 Exhibit 24 with Bates number 44022.

21 BY MR. TEPE:

22          Q.       Do you recognize this document?

23          A.       I don't recall this document.

24          Q.       It does show, though, an e-mail  
25 Mr. Adams sent to you on October 3, 2016, yes?



1 A. Yes.

2 Q. And the subject line is "KTRH Radio  
3 Texas interview request."

4 A. Yes.

5 Q. And Mr. Adams wrote: "Noel, please do  
6 it."

7 Is that him asking you to do the  
8 interview with KTRH Radio in Houston, Texas?

9 A. It appears to be, yes.

10 Q. And then he followed up: "Remember,  
11 short phrases, non-legalese."

12 Do you see that?

13 A. I do see that.

14 Q. What did you understand him to mean by  
15 that?

16 A. To speak in terms that nonlawyers  
17 would understand.

18 Q. And what does that mean, nonlawyers  
19 would understand?

20 A. Don't use legal terms of art.

21 Q. Such as?

22 A. Perhaps language from the statutes  
23 involved. I don't know. I don't recall what he  
24 meant by that or whether I had anything in mind.

25 Q. What else did PILF do to promote Alien

1 Invasion I?

2 A. You're talking about other than what  
3 you have presented to me so far?

4 Q. These are just examples. What do you  
5 recall other than some television, some radio, a  
6 press release?

7 A. We printed -- well, I'm not sure.  
8 Nothing is coming to mind other than those things  
9 you mentioned.

10 Q. Anything on Twitter?

11 A. We likely posted on Twitter.

12 Q. Facebook?

13 A. And Facebook.

14 Q. Did you interview -- I should say did  
15 PILF do interviews to various print publications?

16 A. It's likely, although I'm not  
17 remembering any of them specifically.

18 Q. Does -- to your knowledge, does PILF  
19 do anything to attract a number of visits to the  
20 PILF website?

21 A. It's been some time since I've looked  
22 at it, but at one point in time whomever hosted  
23 our website had a feature where we could see  
24 visitor numbers.

25 Q. Who at PILF has access to this

1 information about the number of visitors to  
2 PILF's website?

3 A. It's likely that Travis Phillips would  
4 have access to that information.

5 Q. Who is Travis Phillips?

6 A. He's someone who consults with us on  
7 computer and IT matters.

8 Q. Is he a PILF employee?

9 A. I think he's an independent contractor  
10 but I'm not entirely sure.

11 Q. Was he working with PILF at the time  
12 Alien Invasion I was published?

13 A. Yes.

14 Q. And so to your knowledge, he would be  
15 the individual best able to answer any questions  
16 about the number of visitors to PILF's website?

17 MR. LOCKERBY: Object to the form.

18 Calls for speculation.

19 THE WITNESS: He would be the person  
20 who could most easily access that  
21 information, but I don't know what knowledge  
22 he has of it as a universe.

23 BY MR. TEPE:

24 Q. Do you recall PILF engaging in similar  
25 promotional efforts to publicize the Alien

1 Invasion II report?

2 A. I do.

3 Q. So there were appearances on TV?

4 A. There were.

5 Q. Radio appearances?

6 A. Likely, although I can't recall the  
7 specifics.

8 Q. Interviews to print media?

9 A. Same answer.

10 Q. Twitter?

11 A. Yes.

12 Q. Facebook?

13 A. Yes.

14 Q. Press releases?

15 A. Yes.

16 Q. Do you recall Mr. Adams going on  
17 Tucker Carlson's Fox News show with the rollout  
18 of Alien Invasion II?

19 A. I have some recollection, yes.

20 (Exhibit 25 marked for identification  
21 and attached hereto.)

22 BY MR. TEPE:

23 Q. The court reporter has just handed you  
24 a document marked Exhibit 25 with Bates number  
25 770.

1 Do you see that?

2 A. I do see that.

3 Q. Do you recognize this?

4 A. I have seen this before.

5 Q. You're at the top of the e-mail chain.

6 Is that right?

7 A. Yes.

8 Q. But the e-mail chain begins, does it  
9 not, with an e-mail from Mr. Adams to Tucker  
10 Carlson?

11 A. Yes.

12 Q. At his Gmail address. Is that right?

13 A. Tucker's Gmail address?

14 Q. Yes.

15 A. Yes.

16 Q. It's dated May 26, 2017?

17 A. Yes.

18 Q. And Mr. Adams said: "Tucker, embargo  
19 release on a report we are putting out Tuesday."

20 Do you see that?

21 A. Yes.

22 Q. And then it lists some key findings  
23 and bullet points. Is that right?

24 A. I see those, yeah.

25 Q. And then someone by the name of Kelly

1 McNally responds to Mr. Adams later that day,  
2 correct?

3 A. Yes.

4 Q. She's the senior booker for Tucker  
5 Carlson Tonight?

6 A. That's what it says in her signature  
7 line.

8 Q. And she wrote: "I want to reach out  
9 to see if you are available on Tuesday to join  
10 Tucker on this report."

11 Do you see that?

12 A. Yes.

13 Q. And then Mr. Adams responds yes. Do  
14 you see that?

15 A. Yes.

16 Q. And then it appears he forwards this  
17 to you. Would you agree with that?

18 A. Yes.

19 Q. So on May 26 at 5:51 p.m. he asks:  
20 "Can you get me a few pages of just the screen  
21 captures of some 'No' check boxes?"

22 Do you see that?

23 A. I see that.

24 Q. What is he referring to there? Do you  
25 know?

1           A.       He's referring to copies of  
2 applications for voter registration on which the  
3 applicant marked the citizenship question "No."

4           Q.       Now, do you recall when we were  
5 talking about the voter registration applications  
6 included with Alien Invasion II only a fraction  
7 of those had "No" marked in the check box, right?

8           A.       Yes.

9           Q.       But those are the ones that Mr. Adams  
10 wants copies of, correct?

11                   MR. LOCKERBY: Object to the form of  
12 the question. Lack of foundation.

13                   THE WITNESS: He's asking for copies,  
14 screen captures of applications on which the  
15 applicant checked "No."

16 BY MR. TEPE:

17           Q.       And he says: "Pick ones with  
18 outlandish foreign names, particularly Middle  
19 Eastern if they exist."

20                   Do you see that?

21           A.       I see that.

22           Q.       Do you know why he was asking for such  
23 names?

24           A.       No. He didn't tell me.

25           Q.       Do you have an understanding or a

1 belief -- Strike that.

2 Do you have a belief as to why he was  
3 asking for such names?

4 A. No.

5 MR. LOCKERBY: Object to the form of  
6 the question. Lack of foundation. Calls  
7 for opinion testimony by a lay witness.

8 THE WITNESS: No, I don't.

9 BY MR. TEPE:

10 Q. His e-mail continues: "The more  
11 outlandish the handwriting the better. The more  
12 obviously foreign the better."

13 Do you see that?

14 A. I see that.

15 Q. What did you understand him to be  
16 asking there?

17 MR. LOCKERBY: Object to the form.

18 MR. TEPE: What's the basis for your  
19 objection?

20 MR. LOCKERBY: For one thing, there's  
21 no -- you're asking him what you understood  
22 him to be asking for. There is no question  
23 there.

24 MR. TEPE: I don't understand.

25 MR. LOCKERBY: There is also lack of



1 foundation. Again, it calls for opinion  
2 testimony.

3 MR. TEPE: What's the lack of  
4 foundation? He said that he received this  
5 e-mail. I'm asking about an e-mail he  
6 received from Mr. Adams.

7 MR. LOCKERBY: Well, he doesn't know  
8 what the author of the e-mail intended.

9 MR. TEPE: I'm not asking those  
10 questions.

11 MR. LOCKERBY: I'm just going to  
12 object to form. Pardon me?

13 MR. TEPE: I'm not asking for his --  
14 what Mr. Adams was asking. I'm asking for  
15 his interpretation and understanding of what  
16 Mr. Adams was asking.

17 I mean, if there is a foundational  
18 problem with my question, I want to fix it.  
19 So that's what I'm trying to understand.

20 MR. LOCKERBY: It might help if we had  
21 the question read back at this point.

22 BY MR. TEPE:

23 Q. Okay. So on May 26, 2017, Mr. Adams  
24 sent you an e-mail at 5:51 p.m., correct?

25 A. Yes.

1 Q. And he asked you a question saying:  
2 "Can you get me a few pages of just the screen  
3 captures of some 'No' check boxes?"

4 Do you see that?

5 A. I see that.

6 Q. And I believe your testimony before  
7 was that this was in reference to the voter  
8 registration applications that you had in which  
9 applicants had checked "No" in the citizenship  
10 box.

11 A. Yes.

12 Q. And we had established that of those  
13 764 voter registration applications, PILF had  
14 reviewed only I think 40-something that had "No"  
15 check boxes marked, correct?

16 A. I don't know if that number is correct  
17 but...

18 Q. The numbers in Alien Invasion II.

19 A. But again, I don't know if the 46 or  
20 47 --

21 Q. Those are a small number of the 764,  
22 correct?

23 A. Yes. Only a fraction of them were  
24 "No" check boxes.

25 Q. But those were the ones that Mr. Adams

1 wanted to send to Tucker Carlson's people,  
2 correct?

3 A. Yes.

4 Q. And then in asking this question,  
5 Mr. Adams instructed you: "Pick ones with  
6 outlandish foreign names, particularly Middle  
7 Eastern if they exist."

8 Do you see that?

9 A. I see that.

10 Q. And he said: "The more outlandish the  
11 handwriting the better, the more obviously  
12 foreign the better."

13 Do you see that?

14 A. I see that.

15 Q. What is your understanding as to why  
16 he was asking for foreign names?

17 A. My answer was I don't know. He did  
18 not tell me.

19 Q. So you have no understanding as to why  
20 he was making that request?

21 A. Those are the ones he wanted.

22 Q. And you have no understanding as to  
23 why he wanted those particular names?

24 A. No, I do not recall why.

25 Q. He said: "Ideally they will have

1 voted, but I don't know if you can find that.

2 The degree of outlandishness in the name is just  
3 as important as whether they voted."

4 Do you see that?

5 A. I see that.

6 Q. "They just need a half dozen or so.  
7 Find the best ones. Crazy names. I assume I  
8 don't need to explain this in further detail."

9 Do you see that?

10 A. I see that.

11 Q. Did he need to explain this in further  
12 detail to you?

13 A. Apparently not.

14 Q. Because you understood what he meant  
15 by providing crazy names?

16 A. Well, I understood what he was asking  
17 for. My understanding wasn't necessarily based  
18 on the phrase "crazy names."

19 Q. You responded: "I can dig those out."  
20 Correct?

21 A. I did.

22 Q. Do you recall what crazy names you dug  
23 out?

24 A. I did not dig them out.

25 Q. Who did?

1           A.       I believe Logan Churchwell handled  
2 this request.

3           Q.       Do you recall the names that he picked  
4 out?

5           A.       I think there is an e-mail in which he  
6 transmits them, but I don't recall the names.

7           Q.       Were the crazy names that Mr. Adams  
8 was requesting, do you believe that they were  
9 reflective or representative of all the names  
10 listed in the records attached to Alien Invasion  
11 II?

12                   MR. LOCKERBY: Object to the form.

13                   THE WITNESS: I don't have the  
14 knowledge to answer that because I don't  
15 remember what the names were.

16 BY MR. TEPE:

17           Q.       You can put that document aside.

18                   Alien Invasion II was released the  
19 Tuesday after Memorial Day, correct?

20           A.       That sounds right based on the time  
21 period.

22           Q.       And it was more advantageous to  
23 release the report the Tuesday after Memorial  
24 Day. Do you agree?

25                   MR. LOCKERBY: Object to the form.

1 THE WITNESS: I don't know in which  
2 way that would be more advantageous.

3 BY MR. TEPE:

4 Q. Well, do you think it would be more  
5 advantageous to release the report the Tuesday  
6 after Memorial Day or on Memorial Day?

7 A. Advantageous how?

8 Q. In terms of enabling other people to  
9 see the release of Alien Invasion II.

10 A. In my opinion, I think that releasing  
11 something on a major holiday would be less  
12 advantageous if your goal was to increase  
13 viewership.

14 Q. And PILF's goal was to increase the  
15 number of people who viewed the Alien Invasion II  
16 report, right?

17 A. I would say that was one of our goals.

18 (Exhibit 26 marked for identification  
19 and attached hereto.)

20 BY MR. TEPE:

21 Q. The court reporter has handed you  
22 what's been marked as Exhibit 26, a document with  
23 Bates number 37501.

24 Do you see that?

25 A. I see that.

1 Q. Do you recognize this document?

2 A. I do.

3 Q. What do you recognize it to be?

4 A. It's an e-mail between -- well, among  
5 PILF employees and some others.

6 Q. This e-mail chain is dated October 2,  
7 2016. Is that right?

8 A. Yes.

9 Q. And it begins with an e-mail from  
10 Mr. Adams, the subject line "Congratulations  
11 everyone." Do you see that?

12 A. I do.

13 Q. And he says: "Great lesson how to  
14 generate, create, organize and weaponize  
15 narrative." And then there is a screenshot of  
16 the Drudge Report home page. Is that right?

17 A. Right.

18 Q. And on the Drudge Report he linked to  
19 an article reporting on the Alien Invasion I  
20 report, right?

21 A. Yes.

22 Q. It says: "Report: 1000 plus illegal  
23 voters in Virginia..." Correct?

24 A. I see that, yes.

25 Q. Do you have an understanding as to

1 what Mr. Adams was saying by "Great lesson how to  
2 generate, create, organize and weaponize  
3 narrative"?

4 A. I think he meant that this shows that  
5 our promotion of the report was effective in that  
6 it was or appeared on the Drudge Report.

7 Q. Well, more than that, in the e-mail  
8 above Mr. Adams says: "Noel, remember our  
9 conversation on how important it was to cross the  
10 1000 mark."

11 Do you see that?

12 A. I see that.

13 Q. Do you remember that conversation?

14 A. Yes, vaguely.

15 Q. And what do you recall?

16 A. Discussing that when we received the  
17 records from Alexandria, that it put the total  
18 of -- I think the total cancellations from the  
19 VERIS reports above 1000.

20 Q. Why did you answer the total  
21 cancellations from the VERIS reports instead of  
22 the total number of noncitizens?

23 MR. LOCKERBY: Object to the form.

24 Argumentative and it assumes facts not in  
25 evidence.



1 THE WITNESS: Because the numbers came  
2 from the VERIS reports.

3 BY MR. TEPE:

4 Q. And you called --

5 A. The number of --

6 Q. -- them noncitizens?

7 MR. LOCKERBY: Objection.

8 THE WITNESS: Say that again.

9 BY MR. TEPE:

10 Q. And PILF called them noncitizens,  
11 correct?

12 MR. LOCKERBY: Objection. The  
13 documents speak for themselves.

14 THE WITNESS: Yes, we've been over  
15 what the reports say by now.

16 BY MR. TEPE:

17 Q. Was Mr. Adams telling you in your  
18 conversation with him that if you get to higher  
19 numbers you're more likely to get media  
20 attention?

21 MR. LOCKERBY: Object to the form.

22 THE WITNESS: I think that was part of  
23 what he was saying.

24 BY MR. TEPE:

25 Q. And then he wrote here to you: "Good

1 example why below and it shows in Drudge  
2 headline. It was an important psychological  
3 frontier crossed."

4 Do you see that?

5 A. I see that.

6 Q. And by that do you understand him  
7 saying by crossing the 1000 mark, that was an  
8 important psychological frontier crossed?

9 A. That's what it says.

10 Q. And then you responded: "Amen. Great  
11 headline."

12 A. Yes.

13 Q. You can put that document aside.  
14 Would you agree that being able to get  
15 higher numbers of purported noncitizens was  
16 important to PILF?

17 A. I think it's what we expected to find.

18 Q. That's not what I asked. Would you  
19 agree that people -- Strike that.

20 Would you agree that being able to get  
21 higher numbers of purported noncitizens was  
22 important to PILF?

23 MR. LOCKERBY: Objection; asked and  
24 answered.

25 THE WITNESS: Yes.

1 BY MR. TEPE:

2 Q. You said that you expected to find  
3 high numbers of purported noncitizens on the  
4 voter rolls. Am I understanding you correctly?

5 A. Yes.

6 Q. What was the basis of that  
7 expectation?

8 A. I believe we were aware of a smaller  
9 investigation that had been done in Alexandria on  
10 this very same issue, and based on that small  
11 example we extrapolated statewide. We figured  
12 the number would be quite high.

13 Q. So what you're saying is if the  
14 numbers that you received from Alexandria were  
15 accurate and you extrapolated that statewide, you  
16 would expect to find high numbers of purported  
17 noncitizens. Is that what you're saying?

18 A. That's what I'm saying.

19 Q. Now, you wanted to get above 5000  
20 purported noncitizens, correct?

21 MR. LOCKERBY: Object to the form.

22 THE WITNESS: At some point in time I  
23 believe that became notable.

24 BY MR. TEPE:

25 Q. Notable for the same reasons 1000 was

1 notable?

2 A. I'm not sure we established those  
3 reasons.

4 Q. Well, we just discussed how it was  
5 notable to Mr. Adams that by crossing the 1000  
6 threshold for Alien Invasion I, PILF was able to  
7 get prominent placement on the Drudge Report,  
8 correct?

9 A. Right.

10 Q. And so for the same reasons, would you  
11 agree that if PILF were able to eclipse the 5000  
12 mark that too would be helpful to PILF's ability  
13 to reach viewers of its report?

14 A. Yes.

15 (Exhibit 27 marked for identification  
16 and attached hereto.)

17 BY MR. TEPE:

18 Q. The court reporter has just marked as  
19 Exhibit 27 a document with the Bates number 1979.  
20 Do you recognize this document?

21 A. I've seen this before, yes.

22 Q. Now, I believe you had testified  
23 earlier that there were two statewide VERIS  
24 reports applied to PILF by the Virginia  
25 Department of Elections, correct?

1           A.       They gave us two reports, each for a  
2 different period of time.

3           Q.       Correct. And is this e-mail  
4 reflecting the second report that you received?  
5 No, strike that. I'm sorry.

6                    So this is -- the first e-mail is an  
7 e-mail from the commissioner of the Virginia  
8 Department of Elections March 28th, right?

9           A.       It looks that way, yes.

10          Q.       I'm sorry?

11          A.       Yes, it looks that way. Yes.

12          Q.       And then that got up to a total of  
13 4967 on the list, the VERIS report that you sent  
14 over, right?

15          A.       4976.

16          Q.       You said good luck to eclipse the 5000  
17 mark, correct?

18          A.       That's what the e-mail says.

19          Q.       That's what you said in your e-mail?

20          A.       Yes.

21          Q.       Why?

22          A.       I suppose because 5000 was a clean  
23 number and larger number. The more people that  
24 appeared on these lists the higher the likelihood  
25 that we might accomplish some of the reforms for

1 which we were advocating.

2 Q. Such as?

3 A. Such as changes to the federal  
4 registration form or changes to data sharing,  
5 better safeguards up front to prevent ineligible  
6 people from registering.

7 Q. So higher numbers would help PILF  
8 accomplish the policy objectives that it had,  
9 correct?

10 A. Right. If there is a higher number,  
11 then it would draw more attention to the problem.

12 Q. So just going back, when you received  
13 the e-mail from Mr. Cortes, the statewide VERIS  
14 report, this was for the period January 1, 2011,  
15 through March 20, 2017. Do you see that?

16 A. I see that.

17 Q. Okay. And then so the second report  
18 that you got was from March 21st through sometime  
19 in May, right?

20 A. Yeah. I'll take your word for those  
21 dates, but that sounds right.

22 Q. And then you wrote back -- or actually  
23 you forwarded this e-mail from Mr. Cortes to  
24 Mr. Adams, Mr. Churchwell, and you said: "At  
25 long last the VERIS report from Cortes."

1 A. Correct.

2 Q. What did you mean by "at long last"?

3 A. We had been trying to get this report  
4 from him for a long time, and he finally provided  
5 it.

6 Q. This was the report that PILF wanted  
7 to obtain, correct?

8 A. Well, getting it from the State meant  
9 that we could get all the jurisdictions at once.  
10 So...

11 Q. But whether it came from the  
12 jurisdictions individually or the State, PILF  
13 wanted this particular report, correct?

14 A. Correct. We wanted a VERIS report for  
15 all jurisdictions in Virginia. The only person  
16 who had the ability to generate that I believe  
17 was Mr. Cortes.

18 Q. So you received that e-mail from  
19 Mr. Cortes at 1:25 p.m., correct, on March 28th?

20 A. Yes.

21 Q. And by 1:57 p.m. you joked: "Already  
22 nabbed a descendant of George Washington"?

23 A. Yes.

24 Q. And you pasted a copy of a VERIS  
25 report entry for a George Washington, Jr. Is

1 that right?

2 A. Yes.

3 Q. And Mr. Adams responded: "If false  
4 positive, they will use this one against us." Do  
5 you see that?

6 A. Yes.

7 Q. And did you understand Mr. Adams by  
8 saying "false positive" to mean someone who was  
9 actually a citizen?

10 A. I don't know what I understood at the  
11 time. That's one possibility, yes.

12 Q. That's one possibility?

13 A. Yes.

14 Q. What's another possibility?

15 A. I can't think of any others.

16 Q. So it's fair to say that as of March  
17 28, 2017, PILF recognized that the records that  
18 they just received from the State of Virginia  
19 possibly had citizens on the list?

20 MR. LOCKERBY: Object to the form.

21 THE WITNESS: No, I don't think we had  
22 any way of -- to verify whether those people  
23 were citizens.

24 BY MR. TEPE:

25 Q. Well, you had phone numbers for



1 hundreds of people, right?

2 A. I don't know about hundreds, but there  
3 were phone numbers on some of the applications.

4 Q. Right. The applications that you  
5 didn't want to look at before to determine how  
6 many had phone numbers, right?

7 MR. LOCKERBY: Object to the form.

8 THE WITNESS: The applications you did  
9 not ask me to look at, yes.

10 BY MR. TEPE:

11 Q. No, I offered. I said if you're not  
12 sure how many of those applications have phone  
13 numbers, please go right ahead and look, correct?

14 MR. LOCKERBY: Object to the form.

15 Counsel is arguing with the witness.

16 Counsel could have asked the witness a  
17 direct question directing him to look at  
18 them. Instead the question was "Would you  
19 like to?" Understandably the witness said  
20 no. No one likes to read through hundreds  
21 of documents voluntarily.

22 BY MR. TEPE:

23 Q. You had the phone numbers for at least  
24 some of the people you had listed in the Alien  
25 Invasion II. Would you agree with that?

1 A. Yes.

2 Q. And PILF didn't call a single one of  
3 those people, correct?

4 A. Not to my knowledge.

5 Q. You can put that document aside.

6 In October of 2017, PILF received a  
7 letter from a U.S. citizen who complained about  
8 being included in the Alien Invasion II report,  
9 correct?

10 A. Well, I would have to see the letter  
11 to know if that date is correct.

12 Q. Well, if you don't recall what the  
13 date was, you do recall that PILF received a  
14 letter from a U.S. citizen who complained about  
15 being included in the Alien Invasion II report,  
16 right?

17 A. Well, I think the letter you're  
18 referring to included the claim that the author  
19 was a U.S. citizen. Again, I don't have that  
20 letter in front of me.

21 Q. Do you recall that that was a Jean  
22 Rosen?

23 A. I recall the foundation received a  
24 letter from Ms. Rosen.

25 Q. Also PILF received along with that

1 letter copies of her passport?

2 A. That sounds right.

3 Q. But you still considered her to just  
4 be making a claim to citizenship?

5 MR. LOCKERBY: Object to the form.

6 THE WITNESS: That is what I recalled  
7 ten seconds ago.

8 BY MR. TEPE:

9 Q. Do you have a belief as to Ms. Rosen's  
10 citizenship?

11 MR. LOCKERBY: Object to the form.

12 Calls for opinion testimony from a lay  
13 witness, and Ms. Rosen's citizenship is not  
14 a belief.

15 BY MR. TEPE:

16 Q. The question again is do you have a  
17 belief? It's a "yes" or "no" question. Do you  
18 have a belief as to Ms. Rosen's citizenship?

19 A. Do I have a belief?

20 Q. Yes.

21 A. Yes.

22 Q. And what is that belief?

23 A. I have no reason to doubt her claim  
24 that she's a citizen based on what she's provided  
25 to us.

1 Q. And Ms. Rosen's voter registration  
2 application was included in Exhibit 12 to the  
3 Alien Invasion II initially, correct?

4 A. Yes, inadvertently included.

5 Q. And we had discussed earlier that  
6 there was one version, that's the version that's  
7 sitting in front of you, in which there are a  
8 number of voter registration applications that  
9 were subsequently pulled out, correct?

10 A. Yes.

11 (Exhibit 28 marked for identification  
12 and attached hereto.)

13 BY MR. TEPE:

14 Q. The court reporter has marked what is  
15 Exhibit 28, a document with the Bates number  
16 9322.

17 A. Yeah, I see that.

18 Q. Do you recognize this document?

19 A. Yes, I've seen this before, or most of  
20 it I believe.

21 Q. It begins on October 11, 2017, an  
22 e-mail from Shawna Powell to you and  
23 Mr. Churchwell. Do you see that?

24 A. I see that.

25 Q. She wrote: "See attached letter from

1 Jean Rosen regarding her name being used in the  
2 VVA report."

3 Do you see that?

4 A. Yes.

5 Q. And then Mr. Adams responded to that,  
6 asking you to do a nasty cease and desist  
7 letter -- Strike that.

8 Mr. Adams responded to you the same  
9 day with what he felt was the most important  
10 takeaway from the letter. Is that right?

11 A. That's what it says, yes.

12 Q. And the most important takeaway from  
13 the letter, according to Mr. Adams, is that  
14 Ms. Rosen had received a phone call from the  
15 Southern Coalition for Southern Justice. Is that  
16 right?

17 A. Social Justice, yes.

18 Q. Social Justice, I'm sorry.

19 And then Mr. Adams asked you to do a,  
20 quote, nasty cease and desist letter, close  
21 quote, to SCSJ, correct?

22 A. Yes, that's what he asked.

23 Q. And the purpose of this letter was to  
24 get SCSJ to stop talking to people who had been  
25 listed in the Alien Invasion II report, correct?

1                   MR. LOCKERBY: Object to the form of  
2                   the question.

3                   THE WITNESS: That's not how I  
4                   understood it.

5 BY MR. TEPE:

6           Q.       Oh, you were okay with SCSJ speaking  
7           to registrants listed in Alien Invasion II?

8           A.       No. I meant your characterization of  
9           what Mr. Adams was concerned with.

10          Q.       Well, what was Mr. Adams concerned  
11          with?

12          A.       Not just that they were talking to  
13          them, but that they were telling them certain  
14          things about what we had done with their records  
15          and names.

16          Q.       Like publishing them?

17                   MR. LOCKERBY: Object to the form.

18                  THE WITNESS: No. I believe -- I  
19                  believe he was concerned with the fact that  
20                  they were calling people at random and  
21                  telling them that we had said that they had  
22                  committed crimes or things like that.

23 BY MR. TEPE:

24          Q.       Well, you don't actually know what  
25          SCSJ told people that they spoke to, correct?

1           A.       Yes, I do, because Jean Rosen put it  
2       in her letter.

3           Q.       Other than Ms. Rosen, are you aware of  
4       the contents of communications between SCSJ and  
5       people listed in the Alien Invasion II report?

6           A.       Specifically words they used? No, I'm  
7       not familiar.

8           Q.       Well, you're not familiar with any  
9       language that they used in those communications,  
10      correct?

11          A.       I'm familiar with what Jean Rosen said  
12      she was told.

13          Q.       Right. And I'm asking you about what  
14      SCSJ spoke to with other people other than  
15      Ms. Rosen.

16          A.       When you say "other people," people on  
17      the VERIS reports?

18          Q.       People who were listed in the exhibits  
19      to Alien Invasion II.

20          A.       No, I'm not privy to those  
21      conversations.

22          Q.       Mr. Adams instructed you to defend the  
23      report. That's the Alien Invasion II report,  
24      correct?

25          A.       I see that in his e-mail.

1 Q. And he said: "Make it clear the fault  
2 is Virginia's." Close quote. I'm sorry. "Make  
3 it clear the fault of Virginia's." Is that  
4 correct?

5 A. That's what it says.

6 Q. And you, in a later e-mail, said that  
7 you did a search for Exhibit 1 for Rosen and came  
8 up with nothing.

9 A. I did say that in this, yes.

10 Q. So Ms. Rosen was another example along  
11 with Ms. Gearhart of PILF including her voter  
12 registration application in Exhibit 12 that  
13 shouldn't have been there, correct?

14 A. Yes. The inclusion was inadvertent.

15 MR. LOCKERBY: I'm going to object to  
16 the form of the question, especially the  
17 statement "shouldn't have been included."  
18 Exhibit 12 is a footnote to a portion -- is  
19 referenced in a footnote to a portion of the  
20 report.

21 MR. TEPE: I appreciate the speaking  
22 objection. I will --

23 MR. LOCKERBY: I don't appreciate the  
24 gratuitous comments about the objections.

25 MR. TEPE: Well, I don't appreciate



1 the speaking objections.

2 MR. LOCKERBY: You said you appreciate  
3 it and then you said you don't appreciate  
4 it. Those two are mutually exclusive.

5 BY MR. TEPE:

6 Q. Ms. Rosen was one of the people  
7 included in Exhibit 12 to Alien Invasion II,  
8 correct?

9 A. Her application for voter registration  
10 was included inadvertently.

11 Q. The same thing with Ms. Gearhart. Her  
12 registration application was included  
13 inadvertently, as you would call it, in Exhibit  
14 12?

15 MR. LOCKERBY: Object to the form.

16 THE WITNESS: Yes, under her previous  
17 name.

18 BY MR. TEPE:

19 Q. Now, at 3:09 p.m. you write: "Her  
20 application was provided to us," Exhibit 12,  
21 which is not in the cancellation list, which is  
22 Exhibit 1. Correct?

23 A. Right.

24 Q. And then you wrote: "Another layer of  
25 error on ELECT's behalf."

1 Who is ELECT?

2 A. The Department of Elections.

3 Q. But that's not correct. It wasn't an  
4 error on the Virginia Department of Elections,  
5 correct?

6 A. I don't know completely their role,  
7 but I would not say that it was directly an error  
8 on their behalf.

9 Q. Are you saying it was indirectly their  
10 error?

11 A. No. In terms of the correspondence  
12 that was sent to Ms. Rosen, I wasn't aware of who  
13 had sent her that correspondence.

14 Q. What are you talking about,  
15 correspondence sent to Ms. Rosen?

16 A. I believe she had been sent  
17 correspondence from some election officials  
18 regarding her citizenship.

19 Q. Are you talking about a notice of  
20 intent to cancel?

21 A. Yes.

22 Q. But Ms. Rosen's registration was not  
23 canceled, correct?

24 MR. LOCKERBY: Object to the form.

25 Assumes facts not in evidence and in fact is

1           contrary to the evidence.

2           MR. TEPE:   Again --

3           THE WITNESS:   I'm not sure --

4           MR. TEPE:   You can object to form and  
5           not testify.

6           MR. LOCKERBY:   I didn't testify.

7           MR. TEPE:   You just did testify.

8           MR. LOCKERBY:   I objected.

9           MR. TEPE:   You just testified to what  
10          you believe to be facts in evidence.

11          MR. LOCKERBY:   Counsel has an  
12          obligation not to ask questions for which  
13          there is no factual basis.   And in fact  
14          there is evidence that at one point  
15          Ms. Rosen's registration was canceled.   The  
16          entire -- the premise of the question is  
17          wrong.   And by simply objecting that it  
18          assumes facts not in evidence, that is not  
19          testimony.

20   BY MR. TEPE:

21          Q.       Mr. Johnson, in your e-mail dated  
22          October 11th at 3:09 p.m. you say with respect to  
23          Ms. Rosen, she's not in the cancellation list,  
24          correct?

25          A.       Yes.

1 Q. And the cancellation list was Exhibit  
2 1 to Alien Invasion II, correct?

3 A. Yes.

4 Q. Her application was provided and  
5 published as part of Exhibit 12, correct?

6 A. Yes.

7 Q. At the date that Alien Invasion II was  
8 published, did PILF have any basis to believe  
9 that her registration had been canceled?

10 A. I think we believed that the inclusion  
11 of her application indicated that she was someone  
12 who had been canceled previously.

13 Q. But as we saw with the correspondence  
14 with Mr. Latham from York County, he sent you  
15 copies of notices of intent to cancel, correct?

16 A. Yes.

17 Q. He also sent you copies of  
18 affirmations of citizenship, correct?

19 A. Correct.

20 Q. And it's Mr. Latham's correspondence  
21 with PILF that was the basis for the records that  
22 were included, at least with respect to York  
23 County individuals, in Exhibit 12, correct?

24 A. I believe that Mr. Latham -- what I  
25 believe Mr. Latham had sent us was a VERIS report

1 of everyone who had been canceled for citizenship  
2 reasons and copies of their applications.

3 Q. On November -- November, the e-mail  
4 chain, remember there were four e-mails in  
5 November?

6 A. Yes.

7 Q. Mr. Latham didn't send any VERIS  
8 report, correct?

9 A. No, not on that day.

10 Q. And Ms. Rosen didn't appear on any  
11 VERIS report that was sent to PILF, correct?

12 A. Not that I'm aware of.

13 Q. Do you recall how many voter  
14 registration applications PILF pulled from  
15 Exhibit 12?

16 A. Not -- not the exact number.

17 Q. Does 51 sound right?

18 A. That sounds right.

19 (Exhibit 29 marked for identification  
20 and attached hereto.)

21 BY MR. TEPE:

22 Q. The court reporter has handed you  
23 what's been marked Exhibit 29 with Bates number  
24 17930. Do you see that?

25 A. I see that.

1 Q. This is a long e-mail chain involving  
2 complaints that PILF had received from people  
3 listed in Alien Invasion II. Is that right?

4 A. Could you repeat that again?

5 Q. I'm saying this is a long e-mail chain  
6 involving complaints that PILF -- this is a long  
7 e-mail chain involving a discussion about  
8 complaints PILF had received from people listed  
9 in the Alien Invasion report, correct?

10 A. At least one complaint, Ms. Rosen's.

11 Q. I really just want to ask you one  
12 thing. On the first page, Ms. Powell's e-mail  
13 November 3, 2017, at 11:36 a.m., do you see that?

14 A. And 48 seconds, yes.

15 Q. She says: "I just talked to Noel and  
16 he thinks we should err on the side of caution  
17 and pull all 51 voter apps from Exhibit 12. Do  
18 you have issue with that?"

19 Do you see that?

20 A. Yes.

21 Q. Do you recall having a conversation  
22 with Ms. Powell in which you expressed that  
23 opinion?

24 A. Yes, I do.

25 Q. I'm sorry, yes?

1           A.       Yes, I do.

2           Q.       You can put that document aside.

3                   Now, when PILF pulled those 51 voter  
4 registration applications, they replaced Exhibit  
5 12 on the website with a new version, correct?  
6 Exhibit 12.

7           A.       Right, a new version that excluded  
8 those 51 apps.

9                   (Exhibit 30 marked for identification  
10 and attached hereto.)

11 BY MR. TEPE:

12           Q.       The court reporter has just marked as  
13 Exhibit 30 a document.

14                   Do you recognize this document?

15           A.       It looks like a printout of a page of  
16 our website.

17           Q.       And in particular, this is the page  
18 that houses the exhibits to Alien Invasion II?

19           A.       That's right.

20           Q.       And unfortunately the printout doesn't  
21 have the date. Sometimes it does. I'll  
22 represent that this was printed out yesterday.

23           A.       Okay.

24           Q.       If you go to the second page, there is  
25 an asterisk after Exhibit 12.

1 A. Yeah, I see that.

2 Q. Voter application is revised, then an  
3 asterisk?

4 A. Yes.

5 Q. And then the asterisk below says:  
6 "Exhibit 12 was updated after the discovery that  
7 some records were erroneously disclosed by the  
8 Commonwealth of Virginia which reflected  
9 individuals incorrectly categorized in the  
10 official voter registration archives as being  
11 declared noncitizens. Those records were  
12 removed."

13 Do you see that?

14 A. I see that.

15 Q. That statement is incorrect, isn't it?

16 A. I think it reflected our belief at the  
17 time. It is -- it might be imprecise.

18 Q. It might be?

19 A. I believe at the time it was written  
20 we believed that the applications we had received  
21 belonged to those whose registrations had been  
22 canceled under the category declared noncitizen,  
23 which is why the -- why the language after the  
24 asterisk says what it says.

25 Q. Well, we just looked at an exhibit in



1 which you wrote that Ms. Rosen was not listed in  
2 the cancellation report, correct?

3 A. Correct.

4 Q. And that's the only report or record  
5 that PILF received from the Virginia Department  
6 of Elections that it used in Alien Invasion II,  
7 correct?

8 A. I'm sorry. Repeat that question.

9 Q. The only record that PILF received  
10 from the Virginia Department of Elections which  
11 it used in Alien Invasion II was the VERIS  
12 report, correct?

13 A. I believe so, yes.

14 Q. And in the exhibit we just looked at  
15 you stated that Ms. Rosen's name was not in the  
16 VERIS report that was Exhibit 1 to Alien Invasion  
17 II, correct?

18 A. Correct.

19 Q. And also Ms. Focht, now Gearhart, her  
20 name was not listed there either?

21 A. Correct.

22 Q. The voter registration applications  
23 that you received did not come from the Virginia  
24 Department of Elections, correct?

25 A. Correct.

1 Q. Those come from the local  
2 jurisdictions, correct?

3 A. Correct.

4 Q. So it is not correct that PILF  
5 received, quote, "some records that were  
6 erroneously disclosed by the Commonwealth of  
7 Virginia," close quote?

8 MR. LOCKERBY: Object to the form of  
9 the question.

10 THE WITNESS: Insofar as each  
11 jurisdiction makes up the Commonwealth of  
12 Virginia, it is correct. It does not say  
13 the Department of Elections. It is a  
14 commonwealth, after all.

15 BY MR. TEPE:

16 Q. So the reader is supposed to  
17 understand from this sentence that when you say  
18 Commonwealth of Virginia you meant York County?

19 A. No, they would not understand York  
20 County from this language. But they would  
21 understand that they were disclosed by someone in  
22 the commonwealth.

23 Q. And you said that these records  
24 reflected individuals incorrectly categorized in  
25 the official voter registration archive as being

1 declared noncitizens. Do you see that?

2 A. I see that.

3 Q. That's not correct either?

4 MR. LOCKERBY: Object to the form.

5 THE WITNESS: Is that a question?

6 BY MR. TEPE:

7 Q. Yes.

8 A. What is the question?

9 Q. Isn't it true that the statement here  
10 that the exhibits -- the voter registration --  
11 Strike that.

12 Isn't it true that the voter  
13 registration records that were previously in  
14 Exhibit 12 were not individuals incorrectly  
15 characterized by the official voter registration  
16 archive as being declared noncitizens? Is that  
17 correct?

18 A. Again, it's imprecise. It is -- it  
19 was -- my understanding now is that the records  
20 we had received, which included Ms. Rosen and  
21 Ms. Gearhart's application, were records  
22 belonging to people whose registrations had been  
23 canceled for citizenship reasons. It may be  
24 imprecise to say they were categorized in the  
25 official voter registration archive as being

1 declared noncitizens, with "declared noncitizens"  
2 being in quotations.

3 Q. Because she wasn't actually on that  
4 list that --

5 MR. LOCKERBY: Object to the form.

6 BY MR. TEPE:

7 Q. -- that used the term "declared  
8 noncitizen"?

9 MR. LOCKERBY: Reference to that list  
10 is unclear.

11 THE WITNESS: Who is "she"?

12 BY MR. TEPE:

13 Q. Ms. Rosen.

14 A. She was not on the VERIS reports we  
15 received.

16 Q. And I believe none of the other 50  
17 people whose applications were pulled from  
18 Exhibit 12, correct?

19 A. That's my understanding.

20 Q. Do you believe this disclaimer on  
21 PILF's website should be changed?

22 MR. LOCKERBY: Object to the form.

23 THE WITNESS: I think it could be more  
24 precise.

25 BY MR. TEPE:

1 Q. How so?

2 A. I think it might say that -- perhaps  
3 reflect our understanding as what the records we  
4 received indicated rather than they were  
5 categorized in the official archive.

6 Q. After the complaint in this  
7 litigation, the litigation that you're sitting  
8 here today for, after that complaint was filed,  
9 do you recall Mr. Vanderhulst commenting that he  
10 was surprised the lawsuit hadn't happened sooner?

11 A. I think I recall that, yes.

12 Q. A lawsuit or an IRS complaint or  
13 something?

14 MR. LOCKERBY: Object to the form.

15 THE WITNESS: The communication sounds  
16 familiar.

17 MR. LOCKERBY: Would this be a good  
18 time to take a break before we launch into  
19 other exhibits?

20 MR. TEPE: It will be real quick.

21 (Exhibit 31 marked for identification  
22 and attached hereto.)

23 BY MR. TEPE:

24 Q. The court reporter has just marked as  
25 Exhibit 31 an e-mail with the Bates 11327.

1 Do you see that?

2 A. Yes.

3 Q. And what do you recognize this to be?

4 A. The correspondence from  
5 Mr. Vanderhulst you were just describing.

6 MR. TEPE: You can put that document  
7 aside and we can take a break.

8 THE VIDEOGRAPHER: We are going off  
9 the record. The time is 2:59 p.m.

10 (Recess taken.)

11 THE VIDEOGRAPHER: We are back on the  
12 record. The time is 3:13 p.m.

13 BY MR. TEPE:

14 Q. Mr. Johnson, do you know who Chris  
15 Marston is?

16 A. I do.

17 Q. Who is he?

18 A. I believe he is with the Republican  
19 Party of Virginia.

20 Q. Do you recall him helping you appear  
21 before the Privileges and Elections Committee  
22 after publication of Alien Invasion I?

23 A. I remember some communications with  
24 him preceding that. I don't recall his -- what  
25 you refer to as helping. I don't remember it

1 like that. But...

2 (Exhibit 32 marked for identification  
3 and attached hereto.)

4 BY MR. TEPE:

5 Q. The court reporter has just handed you  
6 what's been marked as Exhibit 32, a document with  
7 Bates number 4883. Do you see that?

8 A. I see that.

9 Q. Do you recognize this document?

10 A. Yeah, I've seen it before.

11 Q. And it's an e-mail chain from October  
12 of 2016. And it concerns in part testimony that  
13 you were going to provide to the general  
14 assembly. Is that right?

15 A. Yes.

16 Q. But the e-mail begins on October 8th  
17 with an e-mail from Mr. Marston to Mr. Adams with  
18 the subject line "jury questionnaires."

19 A. I see that.

20 Q. And he writes to Christian: "You're  
21 doing great work on the noncitizens on the voter  
22 rolls. Keep up the pressure."

23 Do you see that?

24 A. Yes.

25 Q. "I'm trying to round up allies. We've

1 got a joint House session committee meeting next  
2 week on election readiness and the registration  
3 list. I'm working to be sure we get them briefed  
4 up on your report and the issue."

5 Do you see that?

6 A. I see that there.

7 Q. And is that referring to the committee  
8 meeting that you ultimately testified to?

9 A. Yes, I think that's what he's  
10 referring to.

11 Q. He also said: "I know you FOIA'd the  
12 Alexandria clerk for any communications with the  
13 registrar or EB regarding request for jury duty."

14 Do you see that?

15 A. Yes.

16 Q. "Have you ever FOIA'd to actually get  
17 the disqualification list with the reasons for  
18 disqualification?"

19 Do you see that?

20 A. I see that he says that, yes.

21 Q. And then he says: "If we did that, we  
22 could go challenge registrations before the books  
23 closed."

24 Do you see that?

25 A. Yes.



1 Q. "I wondered if you've already done it  
2 and already checked out the law and likely  
3 responses."

4 A. I see that.

5 Q. Do you know what he's talking about  
6 with respect to a FOIA to the Alexandria clerk?

7 A. I believe I do, yes.

8 Q. And what do you understand that to be?

9 A. At some point in time we sent FOIA  
10 requests to various jury clerks asking for data  
11 regarding people who disqualified themselves for  
12 jury duty.

13 Q. What do you mean by disqualified  
14 themselves for jury duty?

15 A. As I understand it, when you are asked  
16 to appear on a jury you're expected to answer  
17 certain questions, and depending on how you  
18 answer them, you may be disqualified from serving  
19 on a jury. And some of those reasons are --  
20 would also disqualify you from registering to  
21 vote.

22 Q. Was PILF looking for the  
23 disqualification list for jury duty?

24 A. I believe we asked for records that  
25 would reflect people who excused themselves from

1 jury duty. I don't know if we specifically asked  
2 for a list.

3 Q. Who would know if you actually asked  
4 for a list of those disqualified from jury duty?

5 A. Well, I think there are records of the  
6 requests themselves that have been produced to  
7 you.

8 Q. Have you had personally any  
9 discussions with Chris Marston about jury  
10 questionnaire data?

11 A. Just me and him?

12 Q. Yes.

13 A. Not that I recall.

14 Q. What about with you, him and other  
15 people involved?

16 A. Nothing specific is coming to mind,  
17 but I can't say that there aren't communications.

18 Q. So if I understand your testimony,  
19 there may be communications involving Chris  
20 Marston, yourself and others with respect to  
21 obtaining jury disqualification lists?

22 A. There may be. The exhibit you just  
23 showed me contains a chain in which it's being  
24 discussed, so whether there are others like this  
25 I can't say for sure.

1 Q. Again, the first paragraph of  
2 Mr. Marston's e-mail to Mr. Adams talks about,  
3 I'm assuming, Alien Invasion I. Would you agree  
4 with that?

5 A. Based on the timing, I think that's  
6 what he's referring to.

7 Q. "Make sure we get them" -- I'm  
8 assuming the general assembly folks -- "briefed  
9 up on your report."

10 Do you see that?

11 A. Yeah. It sounds like he's referring  
12 to the joint House/Senate committee.

13 Q. So he's working to be sure that the  
14 joint House/Senate committee members are briefed  
15 on your report. Is that report the Alien  
16 Invasion I report?

17 A. I think that's what he's referring to,  
18 yes.

19 Q. Do you know why Mr. Marston was trying  
20 to brief members of the joint House/Senate  
21 committee on the Alien Invasion I report?

22 A. I don't.

23 Q. You can put this document aside.

24 Earlier you testified that, generally  
25 speaking, you were supervising the effort to

1 produce and publish the Alien Invasion reports,  
2 correct?

3 MR. LOCKERBY: Object to the form.

4 MR. TEPE: What's the basis for the  
5 objection?

6 MR. LOCKERBY: It's been asked and  
7 answered.

8 MR. TEPE: It's just a segue question.

9 MR. LOCKERBY: Well, it's still  
10 inappropriate. The transcript reflects what  
11 he said.

12 THE WITNESS: I can't say that's my  
13 exact testimony. That sounds right.

14 BY MR. TEPE:

15 Q. There was an effort to collect records  
16 from individual localities for the first Alien  
17 Invasion report, correct?

18 A. Jurisdictions.

19 Q. Jurisdictions?

20 A. Yes.

21 Q. As well as for the second Alien  
22 Invasion report, correct?

23 A. Yes.

24 Q. Now, PILF coordinated its efforts to  
25 collect these election records from these

1 jurisdictions with the Republican Party of  
2 Virginia, correct?

3 MR. LOCKERBY: Object to the form.

4 MR. TEPE: What's the basis for the  
5 objection?

6 MR. LOCKERBY: It's vague, including  
7 the use of the term "coordinate."

8 THE WITNESS: I would not say we  
9 coordinated our collection of records with  
10 them. I have some recollection of them  
11 having requested similar records.

12 BY MR. TEPE:

13 Q. And their requests for similar records  
14 was suggested by Mr. Adams, correct?

15 A. I don't know if that's true or not.

16 (Exhibit 33 marked for identification  
17 and attached hereto.)

18 BY MR. TEPE:

19 Q. The court reporter has handed you a  
20 document marked as Exhibit 33 with the Bates  
21 number 9399.

22 Do you recognize this document?

23 A. I think I've seen it before.

24 Q. It's an e-mail chain that begins with  
25 an e-mail from Shawna Powell dated November 16,

1 2016 to you. Is that right?

2 A. Yes.

3 Q. The subject line is "VA Stafford and  
4 Roanoke"?

5 A. Correct.

6 Q. Is this referencing the effort to  
7 collect records from Stafford and Roanoke  
8 Counties for the Alien Invasion II report?

9 A. Yes, I believe so.

10 Q. Ms. Powell writes: "Regarding  
11 Stafford, called 11/16 to F/U..." Is that follow  
12 up, do you think?

13 A. I hope so.

14 Q. "...on the e-mail sent 11/15. Greg  
15 Riddlemoser stated that RPV," Republican Party of  
16 Virginia, "came to his office and went through  
17 all the records so he considers this matter done.  
18 I explained we are not working with RPV; however,  
19 he stated that they" -- "said that they were  
20 working with them."

21 Do you see that?

22 A. I see that.

23 Q. You forwarded this to Mr. Adams, and  
24 you asked: "Any reason RPV would have asked for  
25 the same records?"

1 Do you see that?

2 A. Yes.

3 Q. And Mr. Adams wrote back: "Yes. I  
4 suggested it. I believe swarming is better than  
5 lone attacks. That's how the left plays."

6 Do you see that?

7 A. I see that.

8 Q. Do you recall having any follow-up  
9 conversation with Mr. Adams regarding his  
10 suggestion to the Republican Party of Virginia?

11 A. No, I don't recall any further  
12 communications.

13 Q. Is it your understanding that making a  
14 request of jurisdictions for election records are  
15 attacks?

16 A. No.

17 Q. Are you aware of other instances  
18 besides Stafford in which the Republican Party of  
19 Virginia was asking for the same records that  
20 PILF was asking for?

21 A. No, I don't recall any. Or have  
22 knowledge of any.

23 Q. You can put that document aside.

24 Do you recall Mr. Adams reaching out  
25 to the Republican Party of Virginia to get

1 addresses of Virginia congressional district  
2 chairs for the Republican Party to send copies of  
3 the Alien Invasion II report?

4 A. I do not recall that.

5 (Exhibit 34 marked for identification  
6 and attached hereto.)

7 BY MR. TEPE:

8 Q. The reporter just handed you what's  
9 been marked as Exhibit 34, a document with the  
10 Bates number 475358.

11 Do you see that?

12 A. Yes.

13 Q. Do you recognize this document?

14 A. Only vaguely.

15 Q. At the bottom Mr. Adams wrote on  
16 May 26, 2017: "Chris, we want to snail mail a  
17 copy of the Alien 2.0 report to the Virginia  
18 congressional district chairs."

19 Do you see that?

20 A. Uh-huh.

21 Q. Was that a yes?

22 A. Yes.

23 Q. And these are -- do you know what  
24 Virginia congressional district chairs are?

25 A. I believe it's the party chairs in



1 each congressional district.

2 Q. And then he responded: "Attached are  
3 the RPV leadership roster. The district chairs  
4 are at the top."

5 Do you see that?

6 A. He attached it.

7 Q. And then this is forwarded to you?

8 A. Oh, I see. Yes, it was forwarded to  
9 me and two other people.

10 Q. Do you recall the mailing list that we  
11 looked at earlier that Virginia congressional  
12 district chairs were included on the mailing  
13 list?

14 A. I do.

15 Q. Did you mail Alien Invasion II to  
16 Democratic Party of Virginia officials?

17 A. Are you asking me?

18 Q. Did PILF mail, to your knowledge,  
19 Alien Invasion II to Democratic --

20 A. I don't recall whether we did.

21 Q. PILF is barred from endorsing a  
22 political party or candidate. Is that right?

23 MR. LOCKERBY: Object to the form.

24 THE WITNESS: I think the IRS rules  
25 prohibit partisan intervention, and that

1 might include endorsement.

2 BY MR. TEPE:

3 Q. But in your reports you try and tiptoe  
4 around that, correct?

5 MR. LOCKERBY: Object to the form of  
6 the question.

7 THE WITNESS: I'm not sure I  
8 understand the question.

9 (Exhibit 35 marked for identification  
10 and attached hereto.)

11 BY MR. TEPE:

12 Q. The court reporter has marked what is  
13 Exhibit 35, a document with Bates number 51869.

14 Do you see that?

15 A. Yes.

16 Q. Do you recognize this document?

17 A. Yeah, I think I've seen this.

18 Q. It appears to be a draft of Alien  
19 Invasion II, is that right, attached to this  
20 e-mail?

21 A. Yes, it's a draft.

22 Q. So you e-mailed Mr. Adams and  
23 Mr. Churchwell a draft on April 28, 2017. Is  
24 that right?

25 A. Yes.

1 Q. You wrote: "One thing to keep in  
2 mind, there is a new section on upcoming  
3 elections in Virginia. We can't endorse any  
4 candidate or party, so I attempted to tiptoe  
5 around it. McAuliffe is not a candidate, as you  
6 probably know, so he's fair game."

7 Do you see that?

8 A. I see that.

9 Q. What did you mean by this paragraph?

10 MR. LOCKERBY: Object to the form.

11 THE WITNESS: I believe we wanted to  
12 mention the effect that ineligible  
13 registration and voting can have on  
14 elections. Knowing that we couldn't endorse  
15 candidates or parties, it required us to  
16 steer clear of that while informing the  
17 reader that there were elections on the  
18 horizon in Virginia.

19 BY MR. TEPE:

20 Q. Was, to your knowledge, PILF trying to  
21 have an impact on the 2017 Virginia elections?

22 MR. LOCKERBY: Object to the form.

23 THE WITNESS: No.

24 BY MR. TEPE:

25 Q. Do you recall in PILF's effort to

1 obtain I believe the VERIS reports, PILF sued the  
2 registrars of Chesterfield and Manassas?

3 A. I do recall that, yes.

4 Q. Do you recall if any amici appeared in  
5 favor of PILF's position?

6 A. Yes, I do recall.

7 Q. So who was an amici you're recalling?

8 A. I believe a brief was filed by the  
9 Republican Party of Virginia, or a more local  
10 chapter of it; I'm not sure which one.

11 Q. Did you work on a report called Safe  
12 Spaces?

13 A. I did.

14 Q. Just generally, what was the purpose  
15 of issuing the Safe Spaces report?

16 A. To educate about the impact of  
17 sanctuary policies on voter registration and  
18 voting. Sanctuary city policies.

19 Q. And what did PILF believe to be the  
20 impact of sanctuary city policies on voter  
21 registration?

22 A. We investigated whether sanctuary city  
23 policies had an impact on the prevalence of  
24 registration by ineligible noncitizens.

25 Q. Well, did you examine the impact or

1 simply report on the number of purported  
2 noncitizens registered in sanctuary city  
3 locations?

4 MR. LOCKERBY: Object to the form.

5 THE WITNESS: That was part of the  
6 report, was the data.

7 BY MR. TEPE:

8 Q. Safe Spaces was published by PILF  
9 after this lawsuit was filed. Is that correct?

10 A. I believe that's correct.

11 (Exhibit 36 marked for identification  
12 and attached hereto.)

13 BY MR. TEPE:

14 Q. The court reporter has marked what is  
15 Exhibit 36, a document with the Bates number  
16 beginning 250.

17 Do you see that?

18 A. I see that.

19 Q. Do you recognize this document?

20 A. Yeah, it looks like an e-mail and a  
21 draft copy of the Safe Spaces report.

22 Q. And so Mr. Adams e-mailed on August  
23 15, 2018, a draft of his edits to the report. Is  
24 that correct?

25 A. Yes.

1 Q. That was sent to you and  
2 Mr. Churchwell?

3 A. Correct.

4 Q. And just flipping through the report,  
5 there are a bunch of comments with CA and then a  
6 number in the comment bubble. Do you see that?

7 A. I see those.

8 Q. Does that refer to Christian Adams?

9 A. Yes.

10 Q. Can you flip to the Bates-numbered  
11 page 268.

12 A. I'm looking at 268.

13 Q. There is a paragraph second from the  
14 top that originally read before edits: "Virginia  
15 currently contains three sanctuary jurisdictions,  
16 all of which disclosed records of noncitizens  
17 previously registered and voting there."

18 Did I read the initial draft correct?

19 A. I think the last word says therein,  
20 but yes, that is correct.

21 Q. Therein.

22 Mr. Adams crossed that out and  
23 replaced "noncitizens previously registered and  
24 voting therein" to "registrants canceled for  
25 citizenship defects."

1 Do you see that?

2 A. I see that.

3 Q. Do you know why he made that edit?

4 MR. LOCKERBY: Object to the form.

5 Lack of foundation.

6 BY MR. TEPE:

7 Q. Let's go -- hanging off this edit is a  
8 comment, comment number 18. Do you see that?

9 A. I do.

10 Q. And Mr. Adams appears to have written:

11 "How is it that after we are involved in  
12 litigation that we are still referring to these  
13 Virginia cases as 'noncitizens'? It defies  
14 explanation. On numerous occasions and in  
15 numerous places I have explicitly said they are  
16 registrations removed for citizenship defects or  
17 registrants canceled for reasons of  
18 noncitizenship. We have to use the actual terms  
19 and not make assumptions they are necessarily  
20 aliens. The continuing improper terminology  
21 contributed to us losing the motion to dismiss  
22 because the court ruled that these subsequent  
23 statements were re-publications with a statute of  
24 limitations."

25 Did I read that comment correctly?

1 A. Yes, you did.

2 Q. Would you agree with Mr. Adams that  
3 calling the individuals listed on the records  
4 that you published in Alien Invasion II as  
5 noncitizens was improper terminology?

6 MR. LOCKERBY: Object to the form.

7 THE WITNESS: Well, at the time  
8 Mr. Adams wrote this comment, as you have  
9 mentioned, this lawsuit had begun in which  
10 it was in dispute -- or the terminology used  
11 was part of the basis for the complaint. I  
12 think that is what Mr. Adams is concerned  
13 about here. His comment otherwise speaks  
14 for itself.

15 BY MR. TEPE:

16 Q. The numbers that are listed here for  
17 Fairfax County, Chesterfield County, Arlington  
18 County, do these come from VERIS reports?

19 A. Yes, they do.

20 Q. Were they updated reports that you  
21 received from jurisdictions?

22 A. I believe they were, yes.

23 Q. And in the final publication of Safe  
24 Spaces, PILF doesn't call the individuals  
25 identified on the VERIS reports noncitizens,



1 correct?

2 A. I don't believe so.

3 Q. You can put that document aside.

4 (Exhibit 37 marked for identification  
5 and attached hereto.)

6 BY MR. TEPE:

7 Q. The court reporter has just marked and  
8 handed you what is Exhibit 37 with Bates number  
9 3971.

10 Do you see that?

11 A. I do see that.

12 Q. What do you recognize this document to  
13 be?

14 A. It looks like an e-mail attaching a  
15 copy of my written testimony before the  
16 Privileges and Elections Committee of the  
17 Virginia general assembly.

18 Q. Why did you testify before this  
19 committee?

20 A. I believe Mr. Adams was unavailable  
21 and asked me to go.

22 Q. Why did anyone from PILF testify  
23 before this committee?

24 A. I believe we were invited to it.

25 Q. And do you know why PILF was invited

1 to it?

2 A. I think our research was germane to  
3 the purpose of the hearing.

4 Q. Do you recall questions arising during  
5 the hearing from members of the committee  
6 questioning the assertions in Alien Invasion I?

7 A. I recall some comments in that regard,  
8 yes.

9 Q. And do you recall these committee  
10 members stating that certain individuals listed  
11 in Alien Invasion I were not noncitizens?

12 A. I'm not sure if that's an accurate  
13 recitation of what was stated, but I remember  
14 something along those lines.

15 Q. Well, what do you recall?

16 A. I recall a committeewoman I believe  
17 claiming that she knew of certain individuals  
18 listed in the report that were not removed for  
19 citizenship reasons.

20 Q. Did you follow up with this  
21 committeewoman?

22 A. I don't believe so.

23 Q. Why not?

24 A. I don't recall.

25 Q. Is it fair to say that she was

1 suggesting that there was some inaccuracy in  
2 Alien Invasion I?

3 A. I think more directly she was  
4 asserting that there was some inaccuracy in the  
5 VERIS report attached to the report.

6 Q. That you relied on in Alien Invasion  
7 I, correct?

8 A. Correct.

9 Q. But you don't recall PILF following up  
10 with the committeewoman regarding her concerns?

11 A. No, I don't recall that.

12 Q. Is there anything else that you recall  
13 from that committee hearing?

14 A. Yes.

15 Q. What do you recall?

16 A. I recall that Reagan George gave  
17 testimony. I recall that Edgardo Cortes gave  
18 testimony. Various general registrars in the  
19 commonwealth gave testimony. I recall there were  
20 other members of the public that gave testimony.

21 Q. Do you recall if Mr. George had any  
22 prepared testimony?

23 A. Yes, he did.

24 Q. Do you have a copy of that testimony?

25 A. Yes, I think he provided us with one.

1 Q. Do you know if PILF still has a copy  
2 of that?

3 A. I believe that we do.

4 MR. TEPE: Counsel, I don't believe  
5 we've received that.

6 MR. LOCKERBY: Pardon me?

7 MR. TEPE: I don't believe we have  
8 received this testimony of Mr. George that  
9 Mr. Johnson suggested may be in PILF's  
10 possession.

11 MR. LOCKERBY: I don't know whether  
12 we've produced it or whether in fact PILF  
13 has it or whether it's responsive, but we  
14 can look.

15 MR. TEPE: I'm just noting it for the  
16 follow-up.

17 BY MR. TEPE:

18 Q. Do you recall the content of  
19 Mr. George's testimony by chance?

20 A. No, I don't remember the specifics.

21 Q. Do you recall the content of any of  
22 the registrars' testimony?

23 A. Yes.

24 Q. What do you recall?

25 A. I recall that Larry Haake testified

1 and that he, I believe, addressed sort of the  
2 subject matter of the Alien Invasion report  
3 insofar as the registration of noncitizens.

4 Q. Do you recall anything else  
5 specifically?

6 A. No.

7 MR. TEPE: Do you want to go off the  
8 record for five minutes?

9 MR. LOCKERBY: Sure, absolutely.

10 THE VIDEOGRAPHER: We are going off  
11 the record. The time is 3:54 p.m.

12 (Recess taken.)

13 THE VIDEOGRAPHER: We are back on the  
14 record. The time is 4:00 p.m.

15 BY MR. TEPE:

16 Q. Mr. Johnson, before the Virginia  
17 Department of Elections sent PILF statewide VERIS  
18 reports, the Virginia Department of Elections  
19 sent you a different report generated from VERIS.  
20 Is that correct?

21 A. They sent us a different report. They  
22 did not tell us how it was generated, so I cannot  
23 say it was generated from VERIS.

24 Q. And sometimes that's referred to as  
25 the custom report?

1           A.       Yes, that's how Mr. Cortes referred to  
2     it.

3                   (Exhibit 38 marked for identification  
4     and attached hereto.)

5     BY MR. TEPE:

6           Q.       The court reporter has just handed  
7     over what's been marked as Exhibit 38, a document  
8     beginning Bates number 16737.

9                   Do you recognize this document?

10          A.       This looks like the e-mail from  
11     Mr. Cortes transmitting the so-called custom  
12     report along with a copy of that report.

13          Q.       And so on September 30, 2016,  
14     Mr. Cortes e-mails you and Ms. Powell, correct?

15          A.       Yes.

16          Q.       And he begins his e-mail by stating:  
17     "On September 16, 2016, the Department of  
18     Elections offered to create a customized report  
19     containing information available in our statewide  
20     voter registration system related to  
21     correspondence sent to potential noncitizens by  
22     local general registrars."

23                   Do you see that?

24          A.       I do.

25          Q.       The statewide voter registration

1 system, that's VERIS, correct?

2 A. That's how I understand it.

3 Q. And then below he lists the fields  
4 that are included in the attached report,  
5 correct?

6 A. Correct.

7 Q. And a number of these fields are the  
8 same fields that appear in what we've been  
9 calling the VERIS report before, correct?

10 A. Some of the information is the same,  
11 yes.

12 Q. Right. And that's the cancellation  
13 report that's been published in the Alien  
14 Invasion reports, correct?

15 A. The VERIS report is, yes.

16 Q. Right. And so both the VERIS report  
17 and this custom report contains a registrant's  
18 last name, right?

19 A. Yes.

20 Q. First name?

21 A. Yes.

22 Q. Voter registration ID?

23 A. If you mean voter ID number.

24 Q. Yes.

25 A. Yes.

1 Q. Registration address?

2 A. Yes.

3 Q. One difference is that the custom  
4 report has a field for current registration  
5 status?

6 A. Yes.

7 Q. But the VERIS reports that were  
8 published in the Alien Invasion reports don't  
9 have that field, correct?

10 A. Correct.

11 Q. And then two other fields listed here  
12 are the date noncitizen correspondence was sent  
13 and the date that they had for a response being  
14 received, if at all?

15 A. Yes.

16 Q. Now, your first reaction to receiving  
17 this report was that it was incredibly helpful --  
18 excuse me, incredibly useful. Is that right?

19 A. I don't recall what my immediate  
20 reaction was.

21 (Exhibit 39 marked for identification  
22 and attached hereto.)

23 BY MR. TEPE:

24 Q. The court reporter has marked as  
25 Exhibit 39 a document with the Bates number 5276.



1 Do you see that?

2 A. I see it.

3 Q. Do you recognize this document?

4 A. Yes, I've seen this before.

5 Q. And so this is an e-mail from you  
6 forwarding the September 30 e-mail and custom  
7 report sent by Mr. Cortes?

8 A. Correct.

9 Q. And you sent this to Mr. Adams?

10 A. Yes.

11 Q. And you wrote: "The data, however,  
12 looks incredibly useful."

13 Do you see that?

14 A. Yes.

15 Q. "If I'm reading this correctly, I  
16 don't see how this is any different than the  
17 lists we asked for originally."

18 Do you see that?

19 A. Yes.

20 Q. And the lists you had asked for  
21 originally was the VERIS report --

22 A. Yes.

23 Q. -- that was published in Alien  
24 Invasion I and Alien Invasion II?

25 A. Yes.

1 Q. "Some registrations" -- the e-mail of  
2 yours continues: "Some registrations indicated  
3 the voters active but most note as canceled."

4 Do you see that?

5 A. Yes.

6 Q. Did PILF end up accepting this report  
7 from Mr. Cortes as being sufficient to satisfy  
8 your requests?

9 A. No, we did not.

10 Q. Here you say that the data looks  
11 incredibly useful. Did you change your mind?

12 A. I don't recall if I changed my mind.

13 Q. Fair enough.

14 You wrote here: "I don't see how this  
15 is any different than the lists we asked for  
16 originally."

17 Did you change your mind as to that  
18 statement?

19 A. I did.

20 Q. Now, do you recall PILF rejecting  
21 Mr. Cortes' custom report as being insufficient  
22 to satisfy your requests?

23 A. I believe we informed him that it did  
24 not satisfy our request for the VERIS report.

25 (Exhibit 40 marked for identification

1 and attached hereto.)

2 BY MR. TEPE:

3 Q. The court reporter has handed you a  
4 document marked as Exhibit 40, Bates number 5129.

5 Do you see that?

6 A. Sorry, 5129?

7 Q. Correct.

8 A. Yes.

9 Q. Okay. And do you recognize this  
10 document?

11 A. Yes, I've seen this before.

12 Q. This is a response from you to  
13 Mr. Cortes' September 30 e-mail with the custom  
14 report, correct?

15 A. Yes, it's a response to his e-mail.

16 Q. So Mr. Cortes e-mailed you at  
17 4:27 p.m.

18 A. Yes.

19 Q. You sent -- in the previous exhibit  
20 you forwarded that report at 4:42 p.m. on the  
21 same day.

22 A. Correct.

23 Q. And then at 6:09 p.m. you responded to  
24 Mr. Cortes, correct?

25 A. 6:09, yes.

1 Q. And you wrote: "Mr. Cortes, we are in  
2 receipt of your report. This report, however,  
3 does not satisfy our requests to the county  
4 registrars. We requested lists of registrants  
5 who were removed from the voter rolls because  
6 they were determined to be noncitizens. Your  
7 report indicates only that the listed individuals  
8 were mailed citizenship confirmation notices. It  
9 does not indicate that they were removed for  
10 citizenship reasons."

11 Do you see that?

12 A. Yes.

13 Q. Now, in the second sentence where you  
14 said "We requested lists of registrants who were  
15 removed from the voter rolls because they were  
16 determined to be noncitizens," that's not exactly  
17 what your original request to the jurisdictions  
18 was, right?

19 MR. LOCKERBY: Object to the form.

20 THE WITNESS: Well, I think that that  
21 would -- by this point in time he was aware  
22 that that's what we were requesting.

23 BY MR. TEPE:

24 Q. What makes you say that?

25 A. I believe at this time he had

1 instructed county registrars not to provide us  
2 with the VERIS reports because he knew that's  
3 what we wanted.

4 Q. The VERIS reports?

5 A. Right.

6 Q. The VERIS reports that do not have a  
7 determination as to whether or not someone is a  
8 citizen, correct?

9 MR. LOCKERBY: Object to the form.

10 THE WITNESS: Well, I wouldn't agree  
11 with that, and we've been over the fact they  
12 say declared noncitizen on them. But we  
13 don't have to go through that again.

14 BY MR. TEPE:

15 Q. That is the phrase used in the column  
16 called "Cancel Type," right?

17 A. Correct.

18 Q. But essentially what PILF wanted was  
19 that particular VERIS report, right?

20 A. We wanted the statewide VERIS report.

21 Q. Right. That had the column with the  
22 cancel type that said declared noncitizen?

23 A. Correct.

24 Q. That's what PILF wanted?

25 A. Yes.

1 Q. You can put that document aside.

2 A. Both of them?

3 Q. Yes.

4 MR. TEPE: The witness has been handed  
5 a document that's been previously marked as  
6 VVA Deposition Exhibit 39.

7 BY MR. TEPE:

8 Q. Do you recognize this document?

9 A. I have seen it before.

10 Q. It's got the Bates number of 1408.

11 This document begins with an e-mail from  
12 Mr. Cortes, March 28, 2017.

13 A. Correct.

14 Q. Attaching a statewide VERIS report as  
15 PILF requested. Is that right?

16 A. Correct.

17 Q. And then you responded thanking him  
18 for the report and noting that there appears to  
19 be 15 jurisdictions missing. Do you see that?

20 A. I see that.

21 Q. And then Mr. Cortes on April 4th  
22 responds to your question about the missing  
23 jurisdictions. Is that right?

24 A. Yes.

25 Q. And then you forward -- you forward

1 Mr. Cortes' response on April 4th to Mr. Adams,  
2 copying Mr. Churchwell, right?

3 A. Correct.

4 Q. And you wrote: "Response from  
5 Mr. Cortes" -- Strike that.

6 "Response from Cortes on the missing  
7 reports. Those counties have not canceled a  
8 single person for citizenship reasons in six-plus  
9 years. Otherwise he just confirms what we  
10 already knew. The report includes only people  
11 who were flagged, then sent an affirmation and  
12 did not return."

13 Did I read that correctly?

14 A. Yes.

15 Q. And this is with reference to the  
16 VERIS report, or one of the VERIS reports that  
17 was published in Alien Invasion II, right?

18 A. Yes.

19 MR. TEPE: You can put that document  
20 aside.

21 Subject to any questions that your  
22 counsel has, I'm done.

23 MR. LOCKERBY: All right. I will have  
24 a few. Just a few.

25 //

EXAMINATION

BY MR. LOCKERBY:

Q. Mr. Johnson, I would like you to look back, please, at what was marked as Exhibit 4 to your deposition.

A. I have Exhibit 4 in front of me.

Q. On the very first page you write: "Response from Bedford County, 35 people removed for being noncitizens. Interestingly, they also provide copies of notices sent to all individuals who indicated to the DMV that they were noncitizens. Each person was sent a notice asking them to confirm their citizenship. That list contains 54 people.

"So 19 people indicated they were citizens in response to the notice after indicating they were noncitizens at the DMV. Those people were kept on the rolls. Hard to believe all 19 people simply made a mistake at the DMV."

First of all, is it sometimes the case that individuals become naturalized citizens at some point after initially registering to vote?

MR. TEPE: Objection to form.

Leading.



1 THE WITNESS: Yes, that happens.

2 BY MR. LOCKERBY:

3 Q. And if someone subsequently affirms  
4 citizenship after being sent a notice of  
5 cancellation, is that still an honor system in  
6 Virginia as you understand it? In other words,  
7 the registrar takes the voter's word for it?

8 MR. TEPE: Objection to form.

9 Leading.

10 THE WITNESS: That's how I understand  
11 it.

12 BY MR. LOCKERBY:

13 Q. And does the subsequent affirmation of  
14 citizenship change the fact that the person  
15 previously stated under oath that he or she was  
16 not a citizen?

17 MR. TEPE: Objection; leading.

18 THE WITNESS: No, it does not change  
19 that.

20 BY MR. LOCKERBY:

21 Q. As you understand the process, does  
22 the fact that someone reregistered after  
23 affirming citizenship represent any kind of  
24 adjudication by the Department of Elections that  
25 the individual is in fact a citizen of the United

1 States?

2 MR. TEPE: Objection; leading.

3 THE WITNESS: No.

4 BY MR. LOCKERBY:

5 Q. As far as you know, does the fact that  
6 someone reregisters after completing an  
7 affirmation of citizenship constitute an  
8 adjudication by a local registrar that any  
9 particular voter is in fact a citizen of the  
10 United States?

11 MR. TEPE: Objection; leading.

12 THE WITNESS: No.

13 BY MR. LOCKERBY:

14 Q. Is it your understanding that federal  
15 or state prosecutors would have access to  
16 information about voter registrations and voting  
17 history that PILF does not?

18 MR. TEPE: Objection; leading. Lacks  
19 foundation.

20 THE WITNESS: Can you repeat the  
21 question?

22 BY MR. LOCKERBY:

23 Q. Let me ask you a different question.  
24 Have you ever heard of the SAVE  
25 program database that is maintained by the

1 Department of Homeland Security?

2 A. Yes.

3 Q. Does PILF have access to the contents  
4 of that database?

5 A. No.

6 Q. Is it your understanding that someone  
7 who is not a United States citizen but falls in  
8 one of several categories can obtain a driver's  
9 license in the Commonwealth of Virginia?

10 MR. TEPE: Objection; form.

11 THE WITNESS: Yes, that's my  
12 understanding.

13 BY MR. LOCKERBY:

14 Q. And is it also your understanding that  
15 a noncitizen who does so will sometimes  
16 prevent -- present certain types of  
17 documentation, for example what's currently  
18 referred to or commonly referred to as a green  
19 card?

20 MR. TEPE: Objection to form.

21 THE WITNESS: Yes, that's my  
22 understanding.

23 BY MR. LOCKERBY:

24 Q. Does PILF have access to documentation  
25 used by noncitizens to obtain driver's licenses

1 in the Commonwealth of Virginia?

2 MR. TEPE: Objection to form.

3 THE WITNESS: No, we don't.

4 BY MR. LOCKERBY:

5 Q. Do you know whether federal or state  
6 prosecutors would have access to that?

7 MR. TEPE: Objection to form.

8 THE WITNESS: My guess is that they  
9 would.

10 BY MR. LOCKERBY:

11 Q. I would like you to look, please, at  
12 what was previously marked as Exhibit 7.

13 A. You might have to give me your copy if  
14 that's possible because I'm not sure where it  
15 ended up. What is Exhibit 7?

16 Q. I'll just give you a copy of it.

17 MR. TEPE: You didn't mark it up, did  
18 you?

19 MR. LOCKERBY: I wrote "Exhibit 7" on  
20 it, and the answers to my questions.

21 MR. TEPE: Thank you.

22 BY MR. LOCKERBY:

23 Q. What is the date on Exhibit 7?

24 A. September 29 of 2016.

25 Q. And did Exhibit 7 contain a draft of

1 what eventually became the Alien Invasion I  
2 report?

3 A. Yes, it does.

4 Q. And from memory, you don't recall how  
5 long before the date of Exhibit 7 you began  
6 drafting what became the Alien Invasion I report,  
7 do you?

8 MR. TEPE: Objection to form.  
9 Misstates his testimony.

10 THE WITNESS: I do not recall how long  
11 before this exhibit, or before September  
12 29th, I started drafting what became Alien  
13 Invasion I.

14 MR. LOCKERBY: I would like to have  
15 this marked as Exhibit 42, I believe.

16 THE REPORTER: 41.

17 MR. LOCKERBY: Just for the record,  
18 what is Exhibit 41? Because I had marked an  
19 April 4, 2017, document by hand as Exhibit  
20 41. I want to make sure.

21 MR. TEPE: That one already has the  
22 VVA 39.

23 MR. LOCKERBY: So we just used the  
24 same number as before?

25 MR. TEPE: Yeah.

1 MR. LOCKERBY: Got it. So this will  
2 be 41.

3 (Exhibit 41 marked for identification  
4 and attached hereto.)

5 BY MR. LOCKERBY:

6 Q. Is the first page of Exhibit 41 an  
7 e-mail that you sent on August 22, 2016?

8 A. Yes.

9 Q. And then there is an attachment. And  
10 what is the attachment?

11 A. According to the e-mail, it's an info  
12 sheet on our correspondence with various Virginia  
13 counties regarding our efforts to get lists of  
14 noncitizens on the voter rolls.

15 Q. Did you use this information sheet in  
16 any way to develop what later became Alien  
17 Invasion I?

18 MR. TEPE: Objection to form.

19 THE WITNESS: I believe some of the  
20 material was used in the report.

21 BY MR. LOCKERBY:

22 Q. I would like you to look now, please,  
23 at what was previously marked as Exhibit 10 to  
24 your deposition. If it helps, it's the Alien  
25 Invasion I report dated September 30, 2016.

1 A. I still can't find it.

2 Q. All right. If you can't find it, we  
3 may need to take a break so you can find it.

4 Is that it upside-down, perhaps?

5 A. There we go, thank you. Okay, I'm  
6 looking at Exhibit 10.

7 Q. And within Exhibit 10 there is an  
8 Exhibit 7 to the report, and I want you to look,  
9 please, at page 48 of 84 within Exhibit 7.

10 A. Okay, I'm looking at that page.

11 Q. And that is a voter registration for  
12 Luciania Freeman. Is that right?

13 A. That is right.

14 Q. And on this particular voter  
15 registration she's checked the box "Yes" in  
16 response to the question "Are you a citizen of  
17 the United States?"

18 A. Yes, she has.

19 Q. And underneath her signature there is  
20 a date that says September 26, 2008, correct?

21 A. I see that.

22 Q. And then if you look down at the  
23 bottom of the page, what does that say? There is  
24 some handwriting that is stamped there.

25 A. It says, "Canceled - declared

1 noncitizen August 12, 2015."

2 Q. And was that notation on this document  
3 when you received it from Prince William County?

4 A. I believe it was, yes.

5 Q. I would like you to look, please, now  
6 at Alien Invasion II, which is the mother of all  
7 deposition exhibits.

8 A. Okay. It's Exhibit 11?

9 Q. Exhibit 11, yes. Thank you.

10 A. Okay, I have that in front of me.

11 Q. There is a page of this document that  
12 has a tab on it, or at least it did on mine, that  
13 is a report that says up top "Commonwealth of  
14 Virginia Department of Elections Cancellation -  
15 Declared Noncitizen, 059 Fairfax County." Can  
16 you find that?

17 A. Is that page 99 of 486?

18 Q. The one I'm looking at actually is  
19 page 100 of 486.

20 A. I'm looking at page 100.

21 Q. And do you see Eliud Bonilla's name on  
22 that?

23 A. I do. It's at the bottom.

24 Q. And under the cancel type, what does  
25 it say there?



1 A. It says declared noncitizen.

2 Q. And the date of this report is  
3 March 20, 2017. That's what it says in the upper  
4 right-hand corner. Is that right?

5 A. That's right.

6 MR. TEPE: Objection to form.

7 MR. LOCKERBY: And what's the basis  
8 for the objection?

9 MR. TEPE: You said the date of the  
10 report. The date of the report is actually  
11 at the bottom.

12 BY MR. LOCKERBY:

13 Q. If you look at -- in the upper  
14 right-hand corner, it says start date 1/1/2011.  
15 Is that right?

16 A. Yes.

17 Q. And do you see an end date that says  
18 3/2/2017?

19 A. Yes, I do.

20 Q. And then at the bottom it says  
21 generated on 3/23/2017. Do you see that?

22 A. I see that.

23 Q. Now, before PILF published Alien  
24 Invasion II, did you inquire of Commissioner  
25 Cortes of what the significance was of someone

1 being listed on this report that says  
2 "cancellation - declared noncitizen"?

3 MR. TEPE: Objection to form. Vague.

4 THE WITNESS: I believe he volunteered  
5 that information in an e-mail.

6 BY MR. LOCKERBY:

7 Q. Do you recall receiving an e-mail from  
8 Commissioner Cortes on that subject?

9 MR. TEPE: Objection to form. Vague.

10 THE WITNESS: Yes, I do.

11 BY MR. LOCKERBY:

12 Q. I'm going to show you a document that  
13 has been filed in the Eastern District of  
14 Virginia in this case as Docket Number 66-2.  
15 It's one page.

16 MR. LOCKERBY: If you would like, we  
17 can take a break and I can get it right now.  
18 It's Exhibit B to PILF's answer, but I don't  
19 have a hard copy.

20 MR. TEPE: What is it?

21 MR. LOCKERBY: It's an e-mail from  
22 Edgardo Cortes to Noel Johnson and Shawna  
23 Powell dated April 4, 2017.

24 MR. TEPE: Is it what's already here?

25 MR. LOCKERBY: No. It's a different

1 e-mail that same date.

2 MR. TEPE: Yeah, if we can get a copy.

3 MR. LOCKERBY: Why don't we all e-mail  
4 it to Andrew and we can take a short break  
5 and get a copy.

6 MR. TEPE: Appreciate that.

7 THE VIDEOGRAPHER: We are going off  
8 the record. The time is 4:33 p.m.

9 (Recess taken.)

10 THE VIDEOGRAPHER: We are back on the  
11 record. The time is 4:33 p.m.

12 BY MR. LOCKERBY:

13 Q. VVA Exhibit 39, the April 4, 2017,  
14 10:04 a.m. e-mail from Mr. Cortes in the third  
15 sentence it says: "This report shows individuals  
16 that were canceled due to self-reported as  
17 noncitizen status and failed to complete an  
18 affirmation of citizenship in the allotted time  
19 frame and continued to be in canceled status. If  
20 an individual was previously canceled and then  
21 subsequently affirmed citizenship and was  
22 reregistered, they would no longer appear on this  
23 report because they would now be on active  
24 status."

25 What was your understanding of that

1 communication from Mr. Cortes?

2 MR. TEPE: Objection. Calls for a  
3 narrative. Vague.

4 THE WITNESS: My understanding was  
5 that the statewide VERIS report that he sent  
6 us, if an individual appeared on that  
7 report, they were on that report due to  
8 their self-reported noncitizen status and  
9 failed to complete an affirmation of  
10 citizenship in the allotted time frame, and  
11 that anyone listed on that report continued  
12 to be in canceled status.

13 BY MR. LOCKERBY:

14 Q. So based on that e-mail, what, if  
15 anything, did you conclude with respect to Eliud  
16 Bonilla who is identified on page 100 of 486 of  
17 Exhibit 7 to the Alien Invasion report?

18 MR. TEPE: Objection to form.  
19 Foundation.

20 THE WITNESS: He was -- by his  
21 inclusion in this list, he was subject to  
22 that explanation that Mr. Cortes gave,  
23 namely that he had self-reported his  
24 noncitizen status, failed to complete an  
25 affirmation of citizenship in the allotted

1           time frame, and continued to be in canceled  
2           status.

3       BY MR. LOCKERBY:

4           Q.       Elsewhere within the VERIS report  
5       that's part of Exhibit 11 to your deposition  
6       there should be a tab that has Luciania Freeman's  
7       name on it. I believe it's on page 258 of 486.

8           A.       Is that the very last tab?

9           Q.       I don't think that it is.

10          A.       You said the application of Luciania  
11       Freeman?

12          Q.       No, it's not an application of  
13       Luciania Freeman. It is part of the VERIS  
14       report.

15          A.       Sorry. Page 258?

16          Q.       Page 258 of 486. Are you with me?

17          A.       I'm looking at 258. Yes.

18          Q.       Based on Mr. Cortes' e-mail to you on  
19       Tuesday, April 4, 2017, what, if anything, did  
20       you conclude about the fact that Luciania Freeman  
21       was listed on that particular page?

22                   MR. TEPE: Objection to form.  
23       Foundation.

24                   THE WITNESS: That her inclusion on  
25       this list meant she was subject to the

1 explanation Mr. Cortes gave, namely that she  
2 was someone who self-reported her  
3 noncitizenship status, failed to complete an  
4 affirmation of citizenship in the allotted  
5 time frame, and continued to be in canceled  
6 status.

7 BY MR. LOCKERBY:

8 Q. Later on in Exhibit 11 there is  
9 another tab that is on a document that has the  
10 number PILF 00050 in the bottom right-hand  
11 corner.

12 A. Okay, I'm looking at that page.

13 Q. And on this particular document  
14 Mr. Bonilla has checked the box "Yes," "Are you a  
15 citizen of the United States?" Do you see that?

16 A. Yes.

17 Q. But on the same page it does say  
18 canceled - declared noncitizen 5/3/2012. Is that  
19 right?

20 A. Yes, that language appears directly  
21 below his signature.

22 Q. And then if you look at another tabbed  
23 page within Exhibit 11 -- this one unfortunately  
24 does not have a number on it. It's a voter  
25 application -- a voter registration application

1 for Luciania Freeman.

2 A. Yes, I'm looking at that page.

3 Q. And on this voter application back in  
4 2008, Ms. Freeman has checked the box "Yes" to  
5 "Are you a citizen of the United States?" Do you  
6 see that?

7 MR. TEPE: Did we already go through  
8 this?

9 MR. LOCKERBY: We did, yes. I'm  
10 setting a predicate. It's a segue question.

11 MR. TEPE: So it's okay now, a segue  
12 question.

13 THE WITNESS: She checked the box  
14 "Yes," I'm a United States citizen.

15 BY MR. LOCKERBY:

16 Q. But at the bottom of the page it says  
17 "canceled - declared noncitizen August 12, 2015,"  
18 correct?

19 MR. TEPE: Asked and answered.

20 THE WITNESS: Yes, it does.

21 BY MR. LOCKERBY:

22 Q. To be registered in the commonwealth  
23 of Virginia, as you understood it, a voter had to  
24 have checked the box "Yes" when registering to  
25 vote, correct?

1           A.       I believe that's a requirement. But  
2 in practice that's not always what happened. By  
3 that I mean some people that checked "No" were  
4 still registered to vote.

5           Q.       But by and large, the majority of  
6 voters that later showed up as canceled  
7 noncitizen had originally checked the box "Yes."  
8 Isn't that right?

9           A.       Yes.

10          Q.       And the fact that a voter checked the  
11 box "Yes" did not mean the voter necessarily was  
12 a citizen of the United States. Is that right?

13                  MR. TEPE: Objection to form. Lacks  
14 foundation.

15                  THE WITNESS: That's my understanding.

16 BY MR. LOCKERBY:

17          Q.       If you look in Alien Invasion II, the  
18 body of the report that's been marked as Exhibit  
19 11 itself, at the bottom of page 13, do you see  
20 there is a footnote 69?

21          A.       I see that.

22          Q.       And then if you look after the  
23 conclusion of the report -- I said footnote.  
24 It's actually technically end note. End note 69  
25 says the voter registration applications are



1 produced in Exhibit 12.

2 Do you see that?

3 A. I see that.

4 Q. And then if you read the sentence  
5 before the end note, it says: "For the remaining  
6 702 noncitizen registrants getting on the voter  
7 rolls was as easy as checking yes to the  
8 citizenship question."

9 That's what it says, right?

10 A. That's what it says.

11 Q. And it doesn't say that the registrant  
12 was not telling the truth when he or she checked  
13 the box "Yes," does it?

14 MR. TEPE: Objection to form.

15 Leading.

16 THE WITNESS: It does not say that.

17 BY MR. LOCKERBY:

18 Q. And in fact was it true that for the  
19 remaining 702 noncitizen registrants getting on  
20 the voter rolls was as easy as checking "Yes" to  
21 the citizenship question?

22 MR. TEPE: Objection to form.

23 THE WITNESS: That is true.

24 BY MR. LOCKERBY:

25 Q. I would like you to look, please, at

1 what's been marked as Exhibit 31 to your  
2 deposition.

3 A. Okay, I'm looking at Exhibit 31.

4 Q. At the bottom of Exhibit 31 there is  
5 an e-mail from a Tierney Sneed of Talking Points  
6 Memo. Do you know who she is?

7 A. I don't know who she is.

8 Q. Do you know anything about this  
9 publication Talking Points Memo that she says she  
10 works for or with?

11 MR. LOCKERBY: Objection to form.

12 THE WITNESS: I only know that it's a  
13 website.

14 BY MR. LOCKERBY:

15 Q. And as of Ms. Sneed's e-mail, had PILF  
16 itself actually seen the lawsuit in which you're  
17 now testifying?

18 MR. TEPE: Objection to form.

19 THE WITNESS: Had we seen the  
20 complaint at the time of this e-mail?

21 BY MR. LOCKERBY:

22 Q. Yes, sir.

23 A. No.

24 Q. In fact, she mentions a lawsuit being  
25 filed in federal court today. Do you see that?

1           A.       I see that.

2           Q.       So you don't have any idea how this  
3       alleged reporter obtained the complaint or had  
4       caught wind of it, or wing of it as she put it,  
5       before it was filed, do you?

6                   MR. TEPE:  Objection to form.

7                   THE WITNESS:  I don't know.

8       BY MR. LOCKERBY:

9           Q.       Now, at the top of the page  
10       Mr. Vanderhulst mentions that he was surprised it  
11       hasn't happened sooner, a lawsuit or an IRS  
12       complaint or something.

13                   Have you yourself ever worked  
14       representing clients in connection with  
15       tax-exempt status?

16                   MR. TEPE:  Objection to form.  Outside  
17       the scope of the deposition.

18                   THE WITNESS:  Yes, I have.

19       BY MR. LOCKERBY:

20           Q.       And have you worked on litigation in  
21       which an entity's tax-exempt status has been,  
22       shall we say, held up at the IRS?

23                   MR. TEPE:  Objection to form.

24                   Leading.  Outside the scope.

25                   THE WITNESS:  Yes, I have.

1 BY MR. LOCKERBY:

2 Q. Well, I certainly wouldn't want to  
3 lead you, so let me rephrase the question.

4 Have you worked on litigation  
5 involving -- or when you worked on litigation  
6 involving tax-exempt status, what was the nature  
7 of that litigation?

8 MR. TEPE: Objection to the form.

9 Outside the scope.

10 THE WITNESS: It involved an entity  
11 that was targeted by the IRS in a so-called  
12 IRS targeting scandal involving Lois Lerner  
13 and others.

14 BY MR. LOCKERBY:

15 Q. And what was or were the entity or  
16 entities that were part of the IRS targeting  
17 scandal, as you use that term?

18 MR. TEPE: Objection; outside the  
19 scope.

20 THE WITNESS: Could you rephrase the  
21 question?

22 BY MR. LOCKERBY:

23 Q. What entity or entities had allegedly  
24 been targeted by the IRS?

25 MR. TEPE: Same objection.

1 THE WITNESS: We represented an  
2 organization called True the Vote.

3 BY MR. LOCKERBY:

4 Q. And who were the defendants in that  
5 litigation?

6 A. The IRS, the commissioner of the IRS,  
7 Lois Lerner and various IRS employees, and the  
8 chief counsel for the IRS.

9 Q. And what was the nature of the  
10 allegations in that litigation?

11 MR. TEPE: Objection; outside the  
12 scope.

13 THE WITNESS: Our client alleged that  
14 her constitutional rights were violated in  
15 the processing of her tax-exempt status.

16 The organization she headed, I should say.

17 BY MR. LOCKERBY:

18 Q. And were there any congressional  
19 investigations in connection with what you refer  
20 to as the IRS scandal?

21 A. Yes, there were.

22 Q. Were there any reports issued by the  
23 U.S. Congress in connection with that?

24 A. Yes, there were.

25 Q. And what report or reports were those,

1 if you call?

2 A. Well, I recall a report issued by the  
3 inspector general for tax administration.

4 MR. TEPE: I'm going to make a running  
5 objection to this line of questioning.

6 BY MR. LOCKERBY:

7 Q. And in view of that experience, would  
8 you yourself have been surprised if there had  
9 been some kind of complaint with the IRS  
10 involving PILF?

11 A. No, I would not have been surprised.

12 Q. Would you have been surprised or were  
13 you surprised that there might be a lawsuit  
14 against PILF resulting from publication of the  
15 Alien Invasion reports?

16 MR. TEPE: Objection to form.  
17 Speculation.

18 THE WITNESS: I was surprised that  
19 there was a lawsuit.

20 BY MR. LOCKERBY:

21 Q. When you received this e-mail from  
22 Logan Churchwell at 10:06 a.m., Thursday, April  
23 12, 2018, you replied five minutes later  
24 according to this. Right?

25 A. Correct.

1 Q. And you wrote, quote: "Allison Riggs  
2 is lead counsel you think?"

3 What do you mean by that?

4 A. I knew Allison Riggs to be involved  
5 with the Southern Coalition for Social Justice,  
6 who we knew had contacted at least Ms. Rosen  
7 about her name or her records being included in  
8 the Alien Invasion appendix.

9 Q. And in fact, when you saw the  
10 complaint, did you see Allison Riggs' name and  
11 organization's name as being among the  
12 plaintiffs?

13 A. I believe so.

14 MR. TEPE: Objection to form.

15 Misstates the complaint.

16 BY MR. LOCKERBY:

17 Q. As of April 12, 2018, were you aware  
18 of the involvement of Justin Levitt contacting  
19 individuals identified in the exhibits to the  
20 Alien Invasion reports?

21 MR. TEPE: Objection to form.

22 THE WITNESS: As of what date?

23 BY MR. LOCKERBY:

24 Q. April 12, 2018.

25 A. I was not aware of Mr. Levitt's

1 involvement at that time.

2 Q. When did you become aware of  
3 Mr. Levitt's involvement?

4 MR. TEPE: Objection to form.

5 THE WITNESS: Through production of  
6 discoverable material as a result of this  
7 lawsuit.

8 BY MR. LOCKERBY:

9 Q. If you could look back, please, at  
10 what was marked as Exhibit 13 to your deposition.  
11 While you're at it, perhaps if you could pull  
12 Exhibit 14 and Exhibit 15 as well.

13 A. I'm looking at Exhibit 13.

14 Q. And Exhibits 13, 14 and 15 are e-mails  
15 from the registrar of York County, correct?

16 A. Correct.

17 Q. And the date of all three e-mails is  
18 November 22, 2016. Is that right?

19 A. Correct.

20 Q. And as of the date of these e-mails,  
21 had PILF received reports from the VERIS system  
22 from the Department of Elections or any  
23 jurisdiction in the Commonwealth of Virginia?

24 MR. TEPE: Objection to form.

25 THE WITNESS: Yes, some jurisdictions



1           had provided VERIS reports, but not the  
2           Department of Elections.

3 BY MR. LOCKERBY:

4           Q.       And the Department of Elections had  
5           previously advised registrars not to provide the  
6           records that PILF was requesting. Is that right?

7                   MR. TEPE: Objection; form.

8                   THE WITNESS: Correct.

9 BY MR. LOCKERBY:

10          Q.       And as of November 22, 2016, did you  
11          understand York County to be complying with the  
12          Department of Elections' directive not to provide  
13          a list of voters canceled because of a  
14          declaration of noncitizenship?

15                   MR. TEPE: Objection to form.

16                   THE WITNESS: That's what he states in  
17          one of his e-mails.

18 BY MR. LOCKERBY:

19          Q.       Did you have any understanding as to  
20          whether the documents being provided by York  
21          County were responsive to the request that PILF  
22          had previously made to York County and other  
23          jurisdictions?

24                   MR. TEPE: Objection to form.

25                   THE WITNESS: Yes. It was my

1           understanding that the records he was  
2           providing were responsive to our request.

3       BY MR. LOCKERBY:

4           Q.     I would like you to look now, please,  
5           at Exhibit 17.

6           A.     I'm looking at Exhibit 17.

7           Q.     And the date is May 17, 2017. Is that  
8           right?

9           A.     May 26, 2017.

10          Q.     What's the --

11                 Can you look, please, at the document  
12           that's marked VVA Deposition Exhibit 26, which is  
13           dated May 17, 2017. I can simply show it to you  
14           if you can't find it. It might speed things up.

15                 That was an e-mail from you back in  
16           May 2017, correct?

17          A.     Yes.

18          Q.     And as of the date of the e-mail, had  
19           PILF previously hoped to publish Alien Invasion  
20           II before May of 2017?

21                 MR. TEPE: Objection; foundation.

22                 THE WITNESS: I don't recall.

23       BY MR. LOCKERBY:

24          Q.     I would like you to look now, please,  
25           at what's previously been marked as Exhibit 38.

1 A. I'm looking at Exhibit 38.

2 Q. And you see there is a column in  
3 Exhibit 38 that says "Registration Status."

4 A. I see that.

5 Q. And it says either -- it says canceled  
6 or active or inactive. Is that right?

7 A. I see entries marked with each of  
8 those, yes.

9 Q. And from this document, could you tell  
10 which voters had had their registrations canceled  
11 based on noncitizen status?

12 A. No.

13 MR. TEPE: Objection; form.

14 THE WITNESS: No, I cannot tell.

15 BY MR. LOCKERBY:

16 Q. Had PILF requested information about  
17 voters whose registrations had been canceled  
18 because they were dead or moved to Nebraska or  
19 anything like that?

20 MR. TEPE: Objection to form.

21 THE WITNESS: No.

22 BY MR. LOCKERBY:

23 Q. What reasons for cancellation was  
24 PILF's request directed to?

25 A. For reasons of non-United States

1 citizenship.

2 MR. LOCKERBY: All right. Thank you.

3 I have no further questions.

4 EXAMINATION

5 BY MR. TEPE:

6 Q. Mr. Johnson, the document you were  
7 just looking at that was marked as Exhibit 38.

8 A. I have it in front of me.

9 Q. The cover e-mail of Mr. Cortes states  
10 that the spreadsheet that was attached which  
11 notes whether or not someone has a canceled  
12 registration status pertains to those voters who  
13 were sent correspondence on potential  
14 noncitizenship by local registrars. Is that  
15 right?

16 MR. LOCKERBY: Object to the form.

17 MR. TEPE: What's the basis?

18 MR. LOCKERBY: Pardon me?

19 MR. TEPE: What's the basis?

20 MR. LOCKERBY: The document speaks for  
21 itself.

22 MR. TEPE: Let me start again.

23 BY MR. TEPE:

24 Q. Mr. Lockerby was asking you a couple  
25 of questions about Exhibit 38, correct?

1 A. Yes.

2 Q. And he asked you about the  
3 registration status column. Is that right?

4 A. He did.

5 Q. And he suggested that this report  
6 wouldn't tell you the reason for someone's  
7 cancellation. Is that correct?

8 MR. LOCKERBY: Objection.

9 THE WITNESS: I stated that the report  
10 does not tell me the reason for the  
11 cancellation.

12 BY MR. TEPE:

13 Q. Now, if you go to the cover e-mail of  
14 Mr. Cortes --

15 A. I'm looking at it.

16 Q. He tells you that those individuals  
17 listed were sent correspondence concerning their  
18 citizenship status. Is that right?

19 A. Is there a particular sentence you're  
20 referring to?

21 Q. Yeah. The first sentence. "On  
22 September 16, the Department of Elections offered  
23 to create a customized report containing  
24 information available in our statewide voter  
25 registration system related to correspondence

1 sent to potential noncitizens by local general  
2 registrars."

3 Do you see that?

4 A. I see that.

5 Q. And one of the fields is the date the  
6 correspondence regarding potential noncitizenship  
7 was sent, right?

8 A. That's one of the fields.

9 Q. And one of the fields is the date the  
10 response -- whether or not the person responded  
11 to correspondence. Is that right?

12 A. Correct.

13 Q. So this is not a report regarding  
14 individuals who were canceled because of felony  
15 status, correct?

16 MR. LOCKERBY: Object to the form of  
17 the question. The document speaks for  
18 itself and it's contrary to evidence in the  
19 record.

20 MR. TEPE: I don't appreciate your  
21 interpretation of evidence in the record.

22 MR. LOCKERBY: Actually it's not my  
23 interpretation. It's the sworn testimony of  
24 Edgardo Cortes, commissioner of the Virginia  
25 Department of Elections.

1           MR. TEPE: It is your interpretation  
2           of the testimony of Edgardo Cortes, and I  
3           appreciate you declining from your speaking  
4           objections.

5           THE WITNESS: Nothing in the attached  
6           report gives a reason any one of those  
7           individuals was canceled.

8 BY MR. TEPE:

9           Q.     So my question was this is not a  
10          report regarding individuals who are canceled  
11          because of felony status, correct? That was my  
12          question. Right?

13          A.     I don't know if any of these  
14          individuals were canceled for felony status.

15          Q.     Right. Because Mr. Cortes didn't send  
16          you a report generated based on citizenship -- he  
17          did not send you a report based on felony status,  
18          correct?

19          MR. LOCKERBY: Object to the form.

20          THE WITNESS: Again, I think what he  
21          says is in the report. It speaks for  
22          itself.

23 BY MR. TEPE:

24          Q.     He sent you a report that lists people  
25          who were sent correspondence about potential

1 noncitizenship, correct?

2 A. Correct.

3 Q. And the report provides current  
4 registration status for those individuals,  
5 correct?

6 A. Correct.

7 Q. Some were in active status, right?

8 A. Yes.

9 Q. And some were in canceled status?

10 A. Correct.

11 Q. But all of these individuals were sent  
12 correspondence regarding their citizenship,  
13 correct?

14 A. That's what Mr. Cortes says, yes.

15 Q. Now, am I understanding your testimony  
16 that this report was not sufficient because  
17 possibly some of these individuals who were  
18 canceled for failure to provide an affirmation of  
19 citizenship later died?

20 A. That's one of the possible reasons  
21 that it's not sufficient. It's also not what we  
22 asked for.

23 Q. You asked for documents pertaining to  
24 individuals who were canceled due to potential  
25 noncitizenship, correct?



1           A.       At this point in time Mr. Cortes knew  
2 we were asking for the VERIS reports because he  
3 instructed his county officials not to give us  
4 those reports.

5           Q.       Right. And you testified earlier that  
6 you wanted those VERIS reports, correct?

7           A.       Yes.

8           Q.       Right. And you wanted those VERIS  
9 reports because they had the notation "declared  
10 noncitizen" on it, correct?

11          A.       That, and that they were generated  
12 from the VERIS system.

13          Q.       Right. But having a report generated  
14 from the VERIS system wasn't sufficient for  
15 PILF's purposes, correct? Because he generated a  
16 custom report which you rejected, correct?

17          A.       We --

18                   MR. LOCKERBY: Objection; asked and  
19 answered repeatedly.

20                   THE WITNESS: We did not reject this  
21 report. We said it was not sufficient to  
22 satisfy our records request.

23 BY MR. TEPE:

24          Q.       Because PILF wanted reports that said  
25 "declared noncitizenship" on it, correct?

1 MR. LOCKERBY: Object to the form.

2 THE WITNESS: The reports we wanted  
3 said "declared noncitizenship" on them, yes.

4 BY MR. TEPE:

5 Q. And these were reports of voter  
6 registration cancellation, correct?

7 A. Yes.

8 Q. These were not reports adjudicating  
9 people's citizenship, correct?

10 MR. LOCKERBY: Object to the form.

11 Asked and answered repeatedly now.

12 THE WITNESS: Again, the way that they  
13 are compiled means, according to Mr. Cortes,  
14 that the individual stated under oath that  
15 they are not a citizen.

16 BY MR. TEPE:

17 Q. And also these records were compiled  
18 after citizens stated under oath that they were a  
19 citizen by getting onto the voter registration  
20 application -- voter rolls, correct?

21 A. Can you repeat the question?

22 Q. And these records were also compiled  
23 after citizens stated under oath that they were  
24 U.S. citizens in order to get on the voter rolls,  
25 correct?

1           A.       At some point in time they were added  
2       to the voter rolls. I don't know if each one of  
3       them indicated at that time they were a citizen.

4           Q.       Well, you had looked at 764 voter  
5       registration applications, correct?

6           A.       Yes.

7           Q.       And 702 of those had the applicants  
8       checking "Yes," they were a citizen.

9           A.       Yes.

10          Q.       And so do you not believe they're  
11       checking that they are U.S. citizens?

12          A.       Well, I can see that on the  
13       application that they checked "Yes," if that's  
14       what you're asking.

15          Q.       But you said before that certain  
16       people, to your knowledge, got onto the VERIS  
17       reports because they checked "No," they were not  
18       a citizen, and you made the emphasis that it was  
19       under oath, correct?

20          A.       Well, they didn't get onto the VERIS  
21       report. They got onto the voter roll.

22          Q.       No. My question was you testified  
23       earlier that people at the DMV checked "No" with  
24       regard to citizenship, correct?

25          A.       Yes.

1 Q. And that's how they got onto the VERIS  
2 reports, correct?

3 A. People that were already on the voter  
4 roll subsequently checked "No"? That may be one  
5 way that they are flagged as noncitizens, yes,  
6 sir.

7 Q. So these individuals had checked "Yes"  
8 to get on the rolls, and then potentially checked  
9 "No" at the DMV, which triggered a cancellation?

10 A. Yeah, that's a possible process. Yes.

11 Q. And the State of Virginia has not  
12 adjudicated whether or not these individuals are  
13 citizens, correct?

14 A. Right. As far as I understand it, the  
15 list is compiled based on the sworn statements of  
16 the applicant.

17 Q. Is it the case that you want to  
18 believe that these individuals are not citizens?

19 A. No. The records reflect what they  
20 reflect.

21 Q. Right. And so you had records  
22 reflecting in one case citizenship and in one  
23 case potentially noncitizenship, correct?

24 A. Yes, there could be that case.

25 Q. And in that case you don't know if

1     these individuals are or are not citizens,  
2     correct?

3           A.     I can take them at their word for what  
4     they say on the form.

5           Q.     Which form?

6           A.     What do you mean, which form?

7           Q.     You have two forms, one saying  
8     citizenship, one potentially saying  
9     noncitizenship. Which one are you taking them at  
10    their word for?

11          A.     Well, the subsequent registration is  
12    the more recent in time.

13          Q.     So you were choosing to believe that  
14    form over another form?

15          A.     I'm not choosing to believe anything.

16          Q.     You're not?

17          A.     The Department of Elections or the  
18    county registrar is the one who makes that  
19    determination.

20          Q.     And all they do is actually just send  
21    a notice of intent to cancel to voters who they  
22    have conflicting information about and then tell  
23    people to affirm their citizenship if they are in  
24    fact citizens, correct?

25          A.     Well, not every case is going to have

1 conflicting information. Like I said, we have  
2 people who checked "No" on their original  
3 application and still registered to vote.

4 Q. And Alien Invasion II is not limited  
5 to those people, correct?

6 A. No.

7 Q. Alien Invasion II calls 5562 people  
8 noncitizens even though you have information that  
9 at least 702 of them had said yes, they're a  
10 citizen, correct?

11 A. No. It's based on their inclusion in  
12 the VERIS report that says "declared noncitizen"  
13 next to their name.

14 Q. Right. And so that is the report that  
15 you want to believe, correct?

16 MR. LOCKERBY: Object to the form.

17 THE WITNESS: It's the report on which  
18 the report relies, yes.

19 BY MR. TEPE:

20 Q. And so you never called Luciania  
21 Freeman even though you had records indicating  
22 that she checked "Yes," that she was a citizen,  
23 correct?

24 A. We never called Luciania Freeman.

25 Q. And you never called Eliud Bonilla,

1 correct?

2 A. Not to my knowledge.

3 Q. And yet you called them in Alien  
4 Invasion II noncitizens, correct?

5 MR. LOCKERBY: Objection.

6 THE WITNESS: They are -- they are  
7 included in the report under all of the data  
8 that is in there. They are two of those  
9 people.

10 THE VIDEOGRAPHER: Excuse me, counsel.

11 Your mic.

12 BY MR. TEPE:

13 Q. Mr. Lockerby asked you questions about  
14 what was marked as VVA Deposition Exhibit 39.

15 A. He did.

16 Q. You asked Mr. Cortes a question at  
17 3:01 p.m. on March 28th.

18 A. My e-mail on that day includes a  
19 question, yes.

20 Q. You didn't ask Mr. Cortes for a  
21 definition of what declared noncitizen means, did  
22 you?

23 A. No, not in that e-mail.

24 Q. Did Mr. von Spakovsky -- Strike that.  
25 Who is Hans von Spakovsky?

1           A.       He is a board member of the  
2 foundation.

3           Q.       To your recollection, did he opine on  
4 the content of either of the Alien Invasion  
5 reports before they were published?

6           A.       I believe he did, yes.

7                   MR. TEPE: Nothing further from me.

8                               EXAMINATION

9 BY MR. LOCKERBY:

10          Q.       Just briefly, if the Commonwealth of  
11 Virginia wanted to determine which sworn  
12 statement is true where voters checked "Yes" on  
13 one form, I am a United States citizen, but "No"  
14 on a DMV form, I'm not a United States citizen,  
15 does the Commonwealth of Virginia, as far as you  
16 know, have some documents that would help it make  
17 that determination?

18                   MR. TEPE: Objection to form.

19 Foundation.

20                   THE WITNESS: The DMV could have  
21 documents presented with a driver's license  
22 application that would show whether the  
23 person was a noncitizen, such as a copy of a  
24 green card.

25 BY MR. LOCKERBY:



1 Q. And again, those are documents to  
2 which you, PILF, had access?

3 A. Correct.

4 MR. LOCKERBY: Thank you. I have no  
5 further questions.

6 THE VIDEOGRAPHER: This marks the end  
7 of the deposition of Noel Johnson. We are  
8 going off the record. The time is 5:15 p.m.

9 (Deposition adjourned at 5:15 p.m.)  
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ACKNOWLEDGMENT OF DEPONENT

I, NOEL JOHNSON, have read or have had the foregoing testimony read to me and hereby certify that it is a true and correct transcription of my testimony with the exception of any attached corrections or changes.

\_\_\_\_\_  
NOEL JOHNSON

☐ No corrections

☐ Correction sheet(s) enclosed

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by the witness, NOEL JOHNSON, on this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

C E R T I F I C A T E

DISTRICT OF COLUMBIA

I, JOHN L. HARMONSON, a Notary Public  
within and for the District of Columbia, do  
hereby certify:

That NOEL JOHNSON, the witness  
whose deposition is hereinbefore set forth, was  
duly sworn or affirmed by me and that such  
deposition is a true record of the testimony  
given by such witness.

That if the foregoing pertains to a  
federal case, before completion of the  
proceedings, review and signature of the  
transcript [x] was [ ] was not requested.

I further certify that I am not related  
to any of the parties to this action by blood or  
marriage; and that I am in no way interested in  
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 24th day of April, 2019.



---

JOHN L. HARMONSON, RPR

My commission expires: 11/14/20

## ERRATA SHEET

Case Name:

Deposition Date:

Deponent:

Pg.	No.	Now Reads	Should Read	Reason
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\_\_\_\_\_

Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_

(Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_